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C O N G R E S S

A N D

PHELPS, DODGE & CO.

AN EXTRAORDINARY HISTORY;

O R,

AN ABSTRACT OF SO MUCH OF THE PROCEEDINGS AND INVESTIGATIONS  
OF THE 43<sup>d</sup> CONGRESS (1<sup>st</sup> SESSION), IN RELATION TO "MOIETIES  
AND CUSTOMS REVENUE LAWS," AS PERTAIN TO AND  
FURTHER ILLUSTRATE THE CONTROVERSY BETWEEN  
THE UNITED STATES GOVERNMENT AND THE  
FIRM OF PHELPS, DODGE & CO.

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*"Who ever knew truth put to the worst in a free and open encounter?"—MILTON.*

*"Let us consider the reason of the case; for nothing is law that is not reason."—SIR JOHN POWELL.*

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NEW YORK:

1875.



# INDEX.

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	Page-
Affidavits, rebutting, of Boyd and Farnum.....	77, 78
Algeria, invoice G, March, 1872.....	53, 54
Antwerp, city of. Invoice G., Oct., 1871.....	48
Astor House, compromise meeting at.....	120
Bayard, Thomas, Hon. U. S. Senator. Examination of B. G. Jayne in 1872..	56-59
Beck, Hon. James B., examination of Jayne.....	65
"    "    "    speech of in the House of Representatives.....	159
Bliss, George and Noah Davis, controversy between.....	97-114
"    "    speech before Committee Ways and Means.....	97
Boards of Trade, action of in reference to repeal of moieties.....	5
Boutwell, Hon. George S., advice in the case of Phelps, Dodge & Co.....	21
"    "    "    remarks on the Moiety Bill.....	179
Boyd, Samuel, Custom House Officer, affidavit of.....	77, 78
Brainerd, Charles, illustrations of Jayne and his operations.....	56, 57
Bribery of Merchants' Clerks confessed by Jayne.....	60, 61
Butler, Gen., charged with using stolen letters.....	231
"    "    employment as counsel by Jayne.....	62
"    "    falsifications exposed.....	198, 258
"    "    speech and buffoonery in the House of Representatives.....	192-194
"    "    threats of damaging letters exposed.....	22, 23
Calabria, invoice G, Oct., 1871.....	47
"    "    Nov., 1871.....	50
Collector of New York, testimony respecting the leaden statuary.....	256
Comandi, Joseph, story of.....	142
Commerce, Chamber, annual dinner of in 1874.....	151
Committee of Ways and Means, Forty-third Congress.....	5
Compromise, terror used as an agency for compelling.....	14
"    "    why did they?.....	149
Conkling, Senator, advises heavy penalties.....	164, 165
"    "    connection with the case of Phelps, Dodge & Co.....	97-161
Cost, as a basis for assessing duties.....	109
Custom House abuses.....	135
"    "    oaths.....	15
"    "    officers, payments to by Merchants.....	91
Davis, Hon. Noah, statement before Committee of Ways and Means.....	97
Dawes, Hon. H. L., picture of Jayne and his associates.....	169
"    "    "    speech in the House of Representatives.....	234
Dodge and Butler.....	137
Dodge, Hon. W. E., closing statement of before Com. of Ways and Means...	86, 87
"    "    "    correspondence with B. G. Jayne.....	9, 10

	Page.
Dodge, Hon. W. E., speech before the Committee of Ways and Means .....	7
“ “ “ testimony before Congressional Investigating Com. ....	269
Dodge, William E., Jr., letter from, read before the U. S. Senate.....	270
Duties assessed on market value.....	35
“ how best levied, Hon. Noah Davis' opinions .....	103, 109
Edmunds, Senator, remarks on the Moiety Bill.....	185
“ “ comments of the Press on the speech of.....	189
Errors, liability to occur in making entries of merchandise, illustrations of...	38, 39
Farnum, Samuel J., Custom House Officer, affidavit of.....	77, 78
Fessenden, Hon. W. P., action in reference to error in tariff of 1864....	245
Foster, Hon. Charles, speech in the U. S. House of Representatives.....	227
Handcuffs, use of by Jayne for intimidation.....	57
Heller, Frank, affidavits of.....	73, 80
Hervé, dishonest Clerk of Phelps, Dodge & Co.....	70
Images, leaden, true story of.....	239-242
Importers, demoralization of.....	153
Informers, Curran's portrait of an.....	61
Informers, wages and plunder of, how divided .....	65
Invoices, copies of those charged to have been under valued.....	47, 54
“ duplicate, meaning of charge of using.....	14
James, Daniel, biography of.....	28
James, D. Willis.....	75, 76
Jayne, B. G., examination and statement before Com. of Ways and Means. 6, 55, 62, 82	
“ “ his character, drawn by Mr. Beck.....	167
“ “ “ “ “ “ Dawes.....	169
“ “ illustrations of testimony of, before Congressional Committee of Investigation in 1872.....	56, 57, 58
“ “ violent conduct before Committee of Ways and Means.....	6
Jayne, the informer, a leaf from his history.....	125
Jayne's contradictory testimony.....	63
Jayne's moral suasion.....	57
Kennedy, Clerk for Phelps, Dodge and Co., his discharge and actions.....	69
Letters, packages of private, stolen and used for intimidation .....	62, 63, 64
Market value as a basis of duties.....	109
Martin, Warwick, his affidavit.....	219
Merchants of New York in council.....	144
Merchants, payments of Custom House Officers by.....	91
“ triumph of over the informers.....	173
“ “ “ “ “ “ .....	266
Moiety System, the.....	173, 260
Moore, P. N., affidavit of.....	73, 79
New York, proceedings of public meetings in protest of action of U. S. Revenue Officials.....	144
Nourse, B. F., of Boston, speech of.....	7
Over payments on duties by Phelps, Dodge & Co.....	27
Pay back the money.....	146
Phelps, Dodge & Co., aggregate value of their imports.....	11
“ “ “ card in reference to charges preferred by Gen. Bntler..	257

# INDEX.

V

	Page.
Phelps, Dodge & Co., how their case came before the Committee of Ways and Means.....	6
“ “ “ terms of settlement by.....	23
Plunder of Phelps, Dodge & Co., how distributed.....	65, 161
Porter, William Dodge, affidavit of.....	73, 74, 79
Post-office of New York, employment of faithless clerks in.....	70
Press, comments of on the Congressional Investigation....	124-147, 153-173, 175-189
Prices, remarkable Fluctuations in 1872.....	
Railroad Iron, fluctuations in price of in 1872-3.....	25
Representatives, U. S. House of, verdict on the “Moiety” and “Seizure of Books and Papers” Bill.....	173
Report Committee of Ways and Means.....	155
Roberts, Hon. Ellis H., speech in the House of Representatives.....	156-222
Russia Sheet Iron, liability to damage.....	26-76
Sanborn Contracts, Butler's connection with.....	218
Schultz, Hon. Jackson L., remarks before Committee of Ways and Means....	89
Scott, Senator, remarks on the Moiety Bill.....	177
Secret History of the Phelps, Dodge & Co. case.....	147
Senate, U. S., action on the Moiety Bill.....	175
Slander, Custom House, disproved.....	141
Spy System of the Treasury.....	139
Story of the Phelps, Dodge & Co. case, the whole told connectedly.....	263
Theft of Papers acknowledged by Jayne.....	81, 82
Tin Plate, ad valorem and specific duties on.....	28-43
Tin Plates, relation of ad valorem to specific duties on.....	209
Treasury Spy System.....	139
Tremain, Hon. Lyman, speech in the U. S. House of Representatives.....	237
Turkey and the United States contrasted.....	141
Under valuation charged against Phelps, Dodge & Co.; what it amounted to. 21, 27, 29	
“ “ insignificance of amount charged to Phelps, Dodge & Co.....	190, 191
Ways and Means, report of Committee of.....	155
Wells, Hon. D. A., story of the case of Phelps, Dodge & Co.....	160, 269
Whitelow, Clerk for Phelps, Dodge & Co.....	71
Why did they compromise?....	149
Why they paid.....	132
Woodruff and Robinson difficulty with the Custom House.....	64





# CONGRESS

AND

## The Case of Phelps, Dodge & Co.

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At the commencement of the 1st Session of the 43d Congress (December, 1873,) there was no one matter, upon which the public sentiment of the country was more pronounced and unanimous, than that the treatment to which the merchants of the great seaboard cities had been recently subjected, under the then existing laws regulating Custom House proceedings, should be made the occasion of early and thorough investigation by one or both branches of the National Legislature; and further, that the scope of this investigation should be made sufficiently comprehensive to include within its sphere the subject of the employment on the part of the Government of professional spies and informers as instrumentalities for executing its laws, the corruption of merchants' clerks and other employés, the distribution of moieties, and the arbitrary seizure and unlimited detention of private books and papers. The whole matter about the same time took a more definite shape also, through the action of the National Board of Trade, and the Chambers of Commerce and Boards of Trade of Boston, New York, Philadelphia, Baltimore, and other cities—all of which organizations adopted pertinent resolutions, condemning in the most forcible language the laws under which the Customs duties were collected, and appointed committees, composed of leading merchants and citizens, to visit Washington and ask attention and redress from Congress. Under such circumstances the Committee of Ways and Means of the House of Representatives, having been duly vested on the part of the House with the requisite authority, early in February, 1874, entered upon an investigation of the alleged grievances; proper invitations to be present having been previously given to all parties specially interested and capable of imparting information.

The following are the names of the members of the House of Representatives composing the Committee of Ways and Means, to whom the investigation was intrusted: Hon. Henry L. Dawes, Massachusetts, Chairman; Hon. William D. Kelley, Pennsylvania; Hon. H. C. Burchard, Illinois; Hon.

Ellis H. Roberts, New York; Hon. John A. Kasson, Iowa; Hon. Henry Waldron, Michigan; Hon. L. A. Sheldon, Louisiana; Hon. Chas. Foster, Ohio; Hon. James B. Beck, Kentucky; Hon. William E. Niblack, Indiana; Hon. Fernando Wood, New York.

#### HOW THE CASE OF PHELPS, DODGE & CO. CAME BEFORE CONGRESS.

At the outset it was not the intent of the Committee to make their investigation the occasion of *specially* reviewing the difficulty of any one firm or individual with the Custom House authorities or the Government, but rather to devote their attention to inquiries of a more general nature. Circumstances, however, determined that it should be otherwise; for on the first day of the hearing (February 17th), and subsequently, on the 3d of March, B. G. Jayne, the head detective, spy and informer of the Custom House—the man above all others most responsible for all the iniquitous and arbitrary proceedings which had taken place under the laws—came before the Committee, and, in anticipation of all other witnesses, and with evident hope of relieving himself in some degree from a general public feeling of odium and detestation, renewedly accused Messrs. Phelps, Dodge & Co., in common with other merchants, of serious and grave offences against the revenue laws, as his own most efficient defence and justification. These accusations, moreover, were accompanied by such an amount of gross and indecent abuse against the merchants of New York in general, and the firm of Phelps, Dodge & Co. in particular, that the Chairman of the Committee was finally compelled to inform Mr. Jayne that if he did not at once change the character of his language and conduct himself properly, he would forbid his (Jayne's) further speaking and have him removed from the Committee room.

The controversy of the firm of Phelps, Dodge & Co. with the Government having thus at the very outset of the inquiry, to use an expression of Jayne, been made "*a sort of pivotal case*," and the accusations preferred by Jayne having been given to the public through the press, in the fullest detail, an equally public opportunity for the parties arraigned to be heard in reply was immediately demanded of the Committee.

Accordingly, at the next session of the Committee (March 5th, 1874), Mr. Kelley, of Pennsylvania, in the chair, Mr. Benjamin F. Nourse, of Boston, arose and said :

"I have the honor to represent at this hearing the National Board of Trade, because, as one of its officers, I was selected to present its memorials to Congress praying for amendments in the laws concerning the collection of revenue from customs.

"In the discussions of the National Board, only the character and operation of the laws and the necessary amendments have been considered, irrespective of, and as far as possible uninfluenced by, the cases when importers have been subjected to charges of fraud ; and it was our purpose to present our cause here in the same manner, advocating it upon the assumption, however rash that may be, that the officers of the customs have acted only in the line of duty, in strict obedience to law, that we might charge the law itself as a wrong doer.

"Coming as petitioners, we supposed we should be first heard in support of our petition ; but we find that an opponent of the desired reforms has been permitted to occupy the first two days of this hearing. The resistance thus presented consisted chiefly in statements of cases where an importing house of high standing and character had been charged with frauds—wilful, deliberate, and involving great moral turpitude. We find ourselves confounded at the outset of our work with the very complication and embarrassment of private interests which we sought to avoid as obscuring the real merits of the subject. To clear all this away and be enabled to bring our propositions on their merits alone before you, we ask that these private matters, in which guilt or innocence can have no proper influence upon our special subject, and in the discussion of which we can take no part, shall be first disposed of and be dismissed from before this Committee.

"For myself, and I believe for the other representative merchants present, I respectfully suggest to the Committee that after the extraordinary accusations brought in this place, in terms which you heard, and I need not describe, against the house of Phelps, Dodge & Co., it is but simple justice that Mr. Dodge, who was, and is, present, shall have an opportunity of being heard in his defence and explanation, if he shall choose to present them, before that private matter shall be dismissed. For that purpose, I propose to give way at this time, but with the hope that the Committee will then resume the hearing upon the proposed amendments, to be followed by the explanations and testimony of merchants."

THE CHAIRMAN.—The Committee has anticipated the possibility of such an application, and had determined that if such an application came from the parties with whom you are associated, it should be acceded to ; with this understanding, however, that the hearing of Mr. Dodge is to constitute no precedent for further interruption in the hearing of those parties who are here specially with reference to the general law. On this condition, Mr. Dodge will now be heard.

STATEMENT OF MR. WM. E. DODGE BEFORE THE COMMITTEE OF  
WAYS AND MEANS AT WASHINGTON, MARCH 5TH, 1874.

Mr. Chairman, in coming before this Committee with my associates of the Chamber of Commerce, I had expected simply to present my views in reference to the revenue laws and their administration. I had not thought of entering upon any specific case, and as our own has had sufficient of publicity, it was not my intention to trouble the Committee with any particular statement in reference to it. But the very extraordinary course taken by the Government official on the first meeting of the Committee, and more particularly the manner in which he addressed some of its members at the close of the session, showing copies of what he called fraudulent and duplicate invoices, thus endeavoring to make an impression adverse to myself and my firm, has placed me under the necessity of speaking in my own behalf. I feel under obligation to the Committee for the opportunity to make such statements in regard to this matter as, I think, will satisfy them that a very great wrong has been done to us, and I cannot better give the Committee a clear insight into the whole management of the revenue detective laws as they are now administered, than by the recital of our own connection with them.

Before, however, entering at length upon the remarks which I have to make, I would like to ask the special agent of the Treasury Department to look at the official correspondence which was obtained from the Treasury Department, and state whether it contains all the correspondence on the subject, excepting the letters which were referred to by him as having been written by me to him, and his reply. In the course of my remarks I shall have to refer to these official letters and documents, and I simply want to know before I start whether these letters and documents, as they are there published officially from the Treasury Department, are all that have a bearing on the case.

The CHAIRMAN.—I think you had better make your own statement. We would not like to see a discussion between you and the Treasury agents.

Mr. DODGE.—I want simply to avoid that. After our case had been before the public for some time and we had paid our money, the press, not understanding the matter, as we believe, was constantly confusing the million dollar suit with the \$271,000 paid, and thus creating the impression all over the country that the \$271,000 was the amount of the duties which the Government were entitled to, and of which it had been defrauded by alleged undervaluations. I simply said to our attorney, who was a personal friend of Jayne's, "Great injustice is being done to us

through the press, and I think it is through the influence of the Government officials. We have paid this money, and now a wrong impression has gone abroad, and we have had no means of contradicting it officially. It, therefore, appears to me that Jayne could write a letter in which he might state, simply, that the suit for a million dollars was *pro forma*; that the \$271,000 paid was in compromise or settlement, and was not the amount of the duties due to the Government, but that \$6,658.78 was the total amount of undervaluation, and \$1,664 the total amount which the Government was entitled to as duty." My attorney said, "Mr. Jayne will do that, I am sure." I then drafted the letter which Jayne read here. My attorney took it to him. After a day or two I asked him if he had had Jayne's reply. He said, "No;" that Jayne was very ugly, and that he could not get anything satisfactory, and, therefore, did not take anything. We have never seen the letter which Jayne said he had written to me and which we had suppressed. The letter was not sent to us. It may possibly have been handed to Mr. Wakeman, and, of course, in printing the proceedings we could not publish a letter which we never received. As soon as I heard of it here I immediately telegraphed to my partner in New York to know if any such letter was in our possession, because we have kept all the papers in this case distinct. He telegraphed me in reply that he can find no letter from Mr. Jayne dated on the 26th of March, and that the only letter he finds is the one under date of March 31, published in our statement.\*

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\* The following extract from the statement made by Jayne before the Committee further explains the matter here referred to by Mr. Dodge.

After referring to certain letters addressed to him (Jayne) by Hon. Noah Davis, he said, "I received this one from William E. Dodge:"

"B. G. JAYNE—*Dear Sir*: Now that the matter in controversy between our firm and the Government has been amicably adjusted, as so many misstatements have appeared in the papers, I shall be greatly obliged for a line from you stating the facts.

Very truly yours,

"WILLIAM E. DODGE."

Inclosed in that was a letter prepared for me to sign, and which was also in the handwriting of Mr. Dodge. It was in these words:

"In reply to your note of this date, I consider it due to you to say that the million of dollars for which a *pro forma* suit was instituted against your firm was not for that sum, but the amount of the several invoices which contained items that it was contended were entered below their market value, and might, under a strict ruling of the Revenue Department, forfeit the entire invoices.

"Hence, your agreement to have these items stricken out of the invoices, and, in order to save the vexation of a protracted lawsuit, you offered to pay the Government the aggregate of these disputed items, amounting to \$271,000, but not, as some suppose, an extra duty claim, which was the entire value of the articles in contest. The actual difference in duty paid at the time of the entry and that claimed by the Government was a very inconsiderable amount, which a few thousand dollars would have covered. Thus the Government has received in the form of a money profit a sum far in excess of anything they might claim for duty. Misstatements in the papers as to extra invoices have conveyed a wrong impression. They were not duplicated, but copies of the bills received by the firm in Liverpool from the manu-



It is not a very agreeable duty, Mr. Chairman and gentlemen, although I feel it an important one, to stand before you to-day to defend my good name and the name of my firm; but I feel that it is a privilege, because you are here as the representatives of the Government, before whom we have never had an opportunity to make any statement other than our printed one. In the statement that I now submit I will show the workings of the law, by giving an outline of the particulars in our own case, without entering into all the minutiae.

At the present time, and without any agency whatever upon our part, an attempt has been made to parade our case before the public again, with the assurance, which was made originally, that it is one of the most ter-

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facturers for some special articles manufactured to order and on their own contracts. The claim that your firm had been in the habit of bribing Custom House officers was not sustained by my examination."

That was sent to me by the Hon. Abram Wakeman, the attorney of the firm, for my signature. I refused to sign it. This paper from which I have been reading is in Mr. Wakeman's handwriting. When I refused to sign it he wanted possession of the letter; but I refused to let it go back without his certifying to the copy of it. This their attorney did; but before he did that he had sent this letter:

"DEAR MR. JAYNE: Please let me have the draught memorandum of Mr. Dodge that I left with you. I will return it in a few moments. I want it in preparing the sort of a letter that I indicated last night."

He had indicated that he would write a different letter for me to sign. In reply to this letter from Mr. Dodge I wrote to him on the 26th of March, 1873, as follows:

"WILLIAM E. DODGE—*My Dear Sir*: Your note, with accompanying memorandum, was handed to me by Mr. Wakeman, and in reply I would say that it would give me pleasure to make any statement in regard to my belief in regard to your own personal participation in the irregularities of the firm. The suit instituted was for the recovery of full invoices entered in violation of the first section of the Act of March 3, 1863. That statute requires that all merchandise shall be invoiced at the actual purchase price, and that the owner, or his agent, is required to verify the truth of the invoices on oath before the United States Consul nearest the place of shipment. The owner or his agent is also required to verify the truth of the invoices at the time of making the statement.

"The facts concerning the invoices and the entries on which suit was instituted are, first, the price paid for the goods was not truthfully stated; second, the price was stated less than the purchase price; third, the oath before the Consul at Liverpool did not conform to the truth; fourth, the invoice sworn to was a false invoice; fifth, the entry sworn to was false; sixth, the copies of invoices showing the true purchase price were found in the possession of your firm; seventh, there is no circumstance, aside from the high standing of your house, which distinguishes this case from any other case of violation of the law, except a belief on my part that you personally knew nothing of the infringement of the statute; eighth, that statute of 1863 is plain and explicit; ninth, it seems unnecessary to travel outside the record to confirm or contradict statements made without my knowledge or authority.

"Allow me to add that it seems to me unnecessary to keep up an agitation of this matter, and that, while I have refrained from saying more than duty required, I find it absolutely impossible to falsify the record of facts for the accommodation of any one."

JAYNE.—"In publishing the correspondence in this case to the world, Phelps, Dodge & Co. did not publish this last letter, and if that omission does not come under the old maxim, that the suppression of truth is the assertion of falsehood, I would like to know what does."

As the statement of Mr. Dodge above given shows that the letter written by Jayne was never received by the person to whom it was said to be addressed, the moral maxim made use of by Jayne to sharpen his denunciation of the persons whom he had injured, entirely loses its significance.—*Editor*.

rible cases that has ever occurred in the history of the American revenue service, and that the evidence of fraud, premeditated and continued for a series of years, is beyond all question. We trace these statements directly to parties who have participated in the money extorted from us. It has been intimated that our case was to come before Congress, to be more thoroughly ventilated, and that we are to be shown up as men who have deliberately undertaken to defraud the Government. All this is done to strengthen the system which has placed in the pockets of these people these large sums.

There are certain questions which will naturally arise in the mind of every man who has his attention called to the consideration of our case.

The first is, *How could a firm which has been pursuing a business for forty or fifty years, and which has heretofore sustained a reputation for honest dealings, not only with Government but with individuals, and which, in the course of more than forty years' transactions with the customs, has never until now had any difficulty of any kind with the Government, and which might be supposed, at least, to be beyond the desire of accumulating a few hundred dollars, all at once descend to the mean and contemptible business of defrauding the revenues out of a sum comparatively insignificant?* The next question is *about the alleged duplicate and fraudulent invoices, which have been so extensively paraded before the public.* Next, *how is it possible, unless members of the firm felt that they were guilty and afraid to go before the Court, that they could be induced to pay \$271,000 to compromise the demand against them rather than contest the points at issue?*

In regard to the first I will say that we have imported between three and four hundred million dollars' worth of goods. We have paid to the United States Government more than \$50,000,000 in duties. And I may say it with perfect confidence that our good name and our integrity has never been assailed in these many years until it was assailed by the Government. And in what way, and how was it assailed? Were there no rights which honorable and upright merchants might claim or demand of the Government—men who had conducted for such a series of years their business honestly and faithfully? If error, or even fraud had been suspected, private individuals would certainly have taken some other method than that adopted to have ascertained and brought it to the notice of the firm, that they might have an opportunity for explanation. As the Custom House was managed a quarter of a century ago that would have been the course pursued. There never was a collector in the port of New York in those days who, under such circumstances, would not have sent for the head of the firm and said: "Sir, there are such and such charges here, and before we take any steps in relation to them I want you to go before the proper



officers and make such explanations as may enable them to decide as to what course it is proper to pursue." This is not the way business is done now, by long odds. The first knowledge or hint, in the forty odd years of business that I have had with the Government, that I was accused of any dereliction of duty was when, sitting at the board of one of our large institutions, I received a note from my partner asking me to come to the Custom House. I went there; was taken into the little dark hole, lighted by gas, where this business is done, and there, for the first time, I confronted this man Jayne. The then district attorney, Judge Davis, was also there, and my junior partner, Mr. James. I had no more idea of what we were called there for than the man in the moon. Not a thought had ever crossed my mind that there was anything wrong with the Custom House. Mr. Jayne opened upon me in his bland way, and said that he was very sorry to be obliged to say that the Government was in possession of facts to show that the firm with which I was connected had been engaged for a series of years in deliberate attempts to defraud the revenue; and that it had been done, first, by a systematic perjury in connection with the Custom House oaths, and, secondly, by false and duplicate invoices; that he supposed I knew very well what were the penalties under such circumstances, stating that every breach of the law in the cases of perjury, of which we had been guilty for a great many years, and many times a year, subjected us to a fine of \$5,000, and to imprisonment for not less than two years; that the false invoices, and the undervaluation resulting from them, forfeited the entire amount of those invoices. That was the first salutation. "And now," said he, "I have a warrant ready, from the District Court, to take possession of your books and papers."

Of course it was a thunderbolt which I was not prepared for. I had not seen this man Jayne before. I knew Judge Davis; I knew him to be an honorable, upright man. I turned to the Judge and said, "Judge Davis, this is a very strange proceeding. It is all new to me. I deny the whole of it, and I defy this man, or any other man to produce a duplicate invoice ever received, or ever used, or ever known of by the firm of Phelps, Dodge & Co." "Well," said Jayne, "you may deny it, but I have got them all here, and I have affidavits, too, to the same effect. What is more than that, I have evidence that you have tampered with the officers of the Government."

I said to Judge Davis, "There is nothing in our business that we are unwilling to exhibit to you or to the Government. There is no necessity for a warrant to take possession of our books. If there are any books or papers that are in our possession that are needed by the Government to

establish their ease, they are entirely at your service; no objection whatever will be made to your having them." Judge Davis then said, "I have no knowledge of the matter other than the papers submitted to me." He thought it was a case justifying further investigation. Judge Davis then turned to Mr. Jayne and said, "Mr. Jayne, nothing can be more fair than the proposition made by Mr. Dodge. Now, whatever books you need Mr. Dodge says you can have; you do not want that warrant." Mr. Jayne then said he would go with us to our store and get what books he needed. We went to the store, passed into our office and into the back room. I said to my partners, "There is a charge made against us, and a very fearful one, namely, of a systematic attempt to defraud the revenue, and of perjury—making us liable to imprisonment and fine. This is all new to me. Here is the United States officer who has come to take possession of our books. I have told him that he need not come with a warrant, but that he can have any books or papers that he pleases." Jayne had two or three of his men with him. Our young men at their desks were looking on with astonishment. They saw that something was happening. Mr. Jayne took out a list of books that he wanted, invoice books, cash books, letter books and papers, a cart was backed up to the door, and his men took out the books and carted them away. Mr. Jayne then took out his paper, and looked over it, and said, "There is one book that I want which I do not see here. It is a red covered book with a clasp to it." I asked my partners if they knew of any such book. I knew that I had never seen such a book in the office. There were none of the clerks, confidential book-keepers, cashier, or either of the partners who had ever heard of such a book. "Oh," said Jayne, "there is such a book here, and we are bound to have it." Said I, "In the upper part of our store there is a room where our books have been stored away for the last twenty years. You can take our porters and lanterns and go up there and spend as much time as you please searching for the book you want." I never heard of such a book, and am sure there never was such a one. But in the statement of the district attorney he says that one very important book was kept from that search.

Now, gentlemen, I want to let you understand the manner in which the Government deals with the merchants of the country under the operation of the law. I am not here to contradict the remarks made by this special agent, that he was fulfilling his duty, and that he was engaged in the legitimate business of guarding and defending the Government against the frauds of the merchants of the country. The laws, I have no doubt, have been all arranged and made so as to enable this work to be carried out. I have no doubt that he has gone on, as he said yesterday, and that he has been very industrious. Almost any man would be who was receiving the

same emoluments as he receives for his labor. You, gentlemen, have a specific salary; but this agent has received about twice the salary of the President of the United States, and about twenty times the salary of any of you in a given time of service. He ought to work harder and to be a most talented man, as he stated to you yesterday.

Now, gentlemen, this general bugbear of false duplicate invoices has been paraded over this country, and not only over this country, but the dispatches have been published (not all of them, but some of them) in London, in St. Petersburg, in France and Spain, and in India, in which places we have been in the habit of doing business for many years. It was not so much that I feared the jail which induced me to make this compromise; it was not so much that I dreaded the accusation of perjury; but it was that \$1,750,000. That was the pistol held to my ear. It was money or ruin; that is just what it was and nothing more, and what it was intended to be. And our case is but a repetition of other cases. The victim is made to understand that his is one of the most horrible cases ever examined by the detectives. I was told by Jayne that he regretted very much to say that he had never been called upon in his life to examine so bad a case as this was. Our papers had all been taken from us; we had this terrific indictment preferred, and we had no specifications of its details. We have never been able, up to this day, to obtain a statement of the specific charges, and what were the specific items in the various invoices of \$1,750,000 which went to make up the \$271,000 that we paid. We knew what had been the rulings of the courts in New York—that the least taint in an invoice, an omission of charges, etc., would subject the entire invoice to confiscation; and while the district attorney and other Federal officials were to have their fees on the amount collected, we did not feel like going before the court. We had the distinct promise that we should have an itemized statement of the particular items of the various invoices to which objection was made, but we never have from that day seen it, or known what those items are for, only as we have been able to guess from simply having the names of the vessels sent to us. The invoices by those vessels, all put together, amounted to £163,000, or between seven and eight hundred thousand dollars. The first time we ever obtained anything in the nature of a detailed statement was when we received the names of the vessels. Subsequently we understood there were two entire invoices forfeited to the Government, on account of an omission of charges amounting to about \$1,000. We have never been able to find out what those two invoices were. We do not know to this day, but we suppose from the amount of charges, that they were invoices of block tin, shipped from Penang. Tin was bought at Penang, but in order to ship it in an American vessel it

was sent to Singapore, at a cost of several hundred dollars. The prices of this article are, as a general thing, the same at Singapore as they are at Penang, just as the prices of articles would be about the same in the City of Philadelphia and the City of New York. Under the rulings of the Treasury Department goods shipped from Belfast, with the consular oath taken at Belfast, by way of Liverpool, simply pay the duty they would have paid if they had been shipped direct from Belfast. Under this ruling, and with that understanding, we never thought of such a thing as adding to the invoice the cost of shipping this block tin from Singapore to Penang. It was a mere matter of convenience; the amount was not added to the invoice, but was added in our account current from our correspondent at Penang. In his annual account current he charged for telegrams and freights between the two places, making, in the whole, something like \$1,000, and that amount, I suppose, was what they claimed vitiated and forfeited these two invoices. We did not know how it was; the Government had our books and papers; we could not get any accurate idea as to the amount which the Government claimed had been undervalued; we made every effort to obtain information, but all that we could learn was that it was small in proportion to the amount of the invoices. I then made this proposition to Judge Davis: that they should go over the invoices that were objected to, take out the various items that were undervalued, aggregate the amount, and we would give our check for it. These invoices they pretended to examine, but we were never present at any such examination, nor was any representative of our house, and we have no idea of the manner in which they made up this \$271,000. This man (Mr. Jayne) probably has it in his carpet bag, but we do not know anything about it. All that we could learn was that it was a horrible case.

: Now, in regard to the oath. Mr. Jayne presumes that, having been a merchant for forty years, I did not know what a Custom House oath was. In that interview in the dark place he took out the oath and read it to me as he read it to you yesterday—the oath taken by our firm in Liverpool when the goods were shipped. But he did then exactly what he did yesterday—he said there was nothing there about market value; that it was an oath that that was the exact cost of the goods. And so it is; and that has been the oath since 1799, for aught I know. It is a common thing in New York to say that something of no account is about equal to a Custom House oath. We are not accustomed to swear falsely, but nine tenths of all the entries made in the city of New York, according to the letter of this oath, would come under the implication of perjury. Mr. Jayne did exactly on that occasion as he did yesterday—he read one form but he did not read the other. Here (exhibiting a paper) is the oath in which we swear that

the invoice represents the actual cost and quantity of the goods, and immediately on the same page, Form No. 2, the Consul of the United States at Liverpool certifies that he knows Mr. R—— to be the person who purchased the goods, wares and merchandise therein contained, and who thereupon declared in his presence that it was his intention to make the entry of such goods, wares, and merchandise in the port of New York. And he goes on: "And I do further certify that I am satisfied that the person making this declaration is the person he represents himself to be, and that the market values and wholesale prices of the goods, wares and merchandise described in said invoice, in the principal markets of the country at the time of exportation, are correct and true."

Now, when my partner in Liverpool went to Mr. Dudley, United States Consul, he said: "Mr. Dudley, how can I take such an oath as this? Here is an invoice of goods that cost 30s., and I have invoiced them at 36s. to meet market values. If I invoice them at 30s. and export them to New York, we shall be liable there, if not to forfeiture, at least to have the price so advanced as to cover not merely the difference, but also the penalty for undervaluing." "Now," said he, "I have added 6s. to the cost, and you ask me to swear that it is the absolute cost." Mr. Dudley said: "Mr. James, all we mean by that is, that it is correct, and that it is the fair market value." Then the invoice comes to New York, and I go to the Custom House and am presented with the oath "that the invoice which I have now brought contains a just and faithful account of the actual cost of such goods, wares and merchandise." I say to the deputy collector: "We have added in Liverpool 6s. to the price of these goods to make market value, and since they came here such has been the rapidity of the advance of value in Liverpool (which we have heard by telegraph) that we have added 2s. more to the value, making it 38s.; and now you want me to swear that that is the actual cost of these goods!" "Oh, Mr. Dodge," said he, "you simply swear that it is correct."

Now, sir, without swearing in Liverpool to the invoices in the form made out by the Treasury Department the goods could not be shipped. They would have to lie in the warehouse; and if we did not swear in New York according to the form laid down in the Treasury Department, the goods would go to the public stores and lie there till they rotted. But it is understood by merchants that the intention of the Custom House oath is simply that the thing is right. If you, gentlemen, suppose that in the Custom House at New York, when a man comes up to make his entry he goes and stands up at the desk, and the deputy collector reads out to him what he solemnly swears, you are very much mistaken. Perhaps it ought to be so, but it has not been so for three quarters of a century; neither do I believe




that it is so in any of the large importing ports of the country. I have been at the Custom House many and many a day with half a dozen invoices. The Bible stands on the edge of the desk, just like that (holding up a paper to the Committee). The deputy collector says, "you swear to these invoices, Mr. Dodge?" "Yes." Well, that is the end of it. And I say to you, gentlemen, that with six or seven great steamships arriving in a single day, and with every merchant hurrying to get his invoices through the Custom House, if the deputy collector stops to read all the formal matter of an oath to every man for every invoice, you would require a Custom House four times as big as you have now, and twenty times as many deputy collectors. I do not say that the custom adopted is right, but that is the practice.

I will now go back and say something to you about these terrible invoices, these duplicate invoices, in the same handwriting (as you were told yesterday) of the man who made out the original in Liverpool. You were told that these were duplicate invoices sent to Phelps, Dodge & Co., to enable them the more easily to defraud the Government. But, Mr. Chairman, Phelps, Dodge & Co. cannot go into the market of Liverpool, or into any other market in the world, and buy, at any one time, ready manufactured, one eighth part of the tin which they keep actually in stock. We cannot go into Liverpool and buy ten, twenty, thirty, forty, or fifty thousand boxes of tin and ship them in a week. We make our contracts with ten, twenty, thirty or forty large manufacturers of tin plate, and we contract to take so many boxes a month, for the year round, or so many boxes a week. In some cases, we fix the prices on the 1st of January that shall govern the rate during the year. In other cases we make a contract, and the price is to be fixed at quarter day. The manufacturers will ship us the tin all along, and when quarter day comes the price is fixed. A few years ago all the tin plate that was manufactured was but a little larger than this sheet of paper. In process of time the size was doubled. First the size was 10 by 14; then it was increased to 14 by 20; then came 20 by 28; and so the different sizes and the different thicknesses have all gone on increasing. When the law was passed under which most of these regulations were made (the law of 1799) five hundred boxes of tin plate a year would cover all the importations into all ports of the United States. There are now imported between one and a half and two million boxes annually, and it enters into all the varieties of domestic and manufacturing goods used all over the United States. We now import tin plate as large as the width of this table, 20 to 30 inches wide, for the purpose of supplying the immense cheese establishments throughout the country. They want it to line their vats, so as to have no break in them. There are no regular manufacturers

of these tins ; they are not merchantable sizes, like X, XX, XXX, and XXXX, each X representing 28 pounds additional weight ; and when the price of "I C" tin is given it governs the price of all the others. All these immense sizes are made to order. There has sprung up in this country within the last few years an enormous manufacture of tin vessels that are stamped ; large tin pails, holding three, or four, or five gallons, with not a seam in them, and pans of all sizes, all made by taking these large sheets of tin, and, with a heavy press, dropping on them until they rise up into shape. These manufacturers must have tin plates of particular sizes to meet their particular orders ; and when we make a contract with a manufacturer in England, running for six or twelve months, we also make contracts with manufacturers in Chicago, Philadelphia, Pittsburg, and all over this country, to furnish them with a certain number of boxes of tin per month, of all the particular sizes they want, so that they will be sure to have the sizes that are necessary to make the assortment of goods that they have to sell to their customers. We make our contracts with them for so many boxes a month, at a fixed price, or at a price predicated upon the price in Liverpool at the time of shipment, or at the price in New York at the time of arrival. Now, when we make a contract in England for ten, twenty, or thirty thousand boxes of ordinary sizes, we give at the same time an order for one, two, or three thousand boxes of extra sizes. The manufacturers do not like to make them. Englishmen do not like to be thrown out of their usual mode of doing business ; but they will make so many boxes of extra size to so many other boxes of the regular size ; and when they ship along one or two thousand boxes of the regular size, they will also send twenty or thirty boxes of these extra sizes. They come along in dribblets, and are for particular orders.

Now, in the hurry of doing business in Liverpool, with two or three steamers leaving in a day (and for the last five years most all our shipments have been by steamer), things have to be done very hurriedly. These ships clear in the afternoon, and, by a regulation of the Consul, every invoice must be at the Consul's office and sworn to by 1 o'clock. He will not receive them afterward, and the steamers cannot sail unless they have the bills of lading. There have to be four bills of lading and three invoices made out in a hurry, and there is a large amount of writing to be done. Now, in the exigencies of getting these off, our firm in Liverpool has been in the habit of sending these papers (showing to the Committee a press copy of the manufacturers' bills without the heading), and these are not in any sense or in any shape duplicate invoices. I defy that man Jayne to show one, and I defy the Government to show one. These papers, as I say, being press copies of the bills sent by the manufacturers to Phelps,



James & Co., are frequently, in the hurry of business, sent on to us, so that we may know what goods of that manufacturer are included in the invoice. This is not a copy of the invoice; it is simply a bill from the manufacturers to Phelps, James & Co. Any one of these bills may relate to five or six articles. This invoice (holding one up) relates to three articles. And what is it for? simply to say that in this invoice there are some goods coming out marked " O." These particular goods probably were to go to Chicago, or to Cincinnati, or to Saint Louis, or to Pittsburgh. They come in very large and cumbersome boxes, which we would not want to have carried from the ship up to our store and then to the place from which they are to be forwarded to their destination. But our young man who attends to the shipping is able in this way to know what goods are to go to a particular place, so that he can have them taken from the ship and put on board of the boat or railroad, that they may go off directly. Instead of being secret invoices designed to cheat and defraud the Government, these press copies were taken and pasted directly on the invoice book, so that everybody might see them, and that when the shipping clerk came he might know what goods were to go somewhere else instead of being carried to the store. The Committee will notice this breach in the top of the paper (exhibiting it to the Committee), where the clerk, who subsequently became the informer, tore it off the invoice book. In this particular invoice to which the press copy refers there are ten boxes *6d.* below cost, fifteen boxes *1s. 6d.* below cost, the whole making a difference of four pounds odd, which will make a difference in duty of about five dollars.

MR. WOOD.—What is the amount of the invoice?

MR. DODGE.—The amount of the entire invoice is £5,114, or about \$22,000, and the value of these particular articles is £223.

I desire to make an additional remark in reference to these press copies of the manufacturers' bills. In some cases, instead of having them copied in that way, the same young man who made out the invoices, made a copy of these manufacturers' bills in his own handwriting, and sent them on; but in every case they were put on the invoice books, where everybody could see them. The way the mistake occurred in the invoice was as follows: These very large tins are purchased from the manufacturers by the ton, and they are converted into boxes of 112 pounds or 224 pounds, and it is in making the calculation from the ton to the box that the mistake was made. It was in the hurry of computation, and in the pressure for time. In this other invoice, which I happened to take up, I find that the actual amount of the bills, as they came from the manufacturers, was £270 12s. 2*d.*, while the invoice was £271 18s.

MR. BECK.—So that mistakes occurred on both sides.

Mr. DODGE.—Yes, sir ; clerks are not immaculate, and they will make mistakes sometimes. We have recently made in an entry of £1,234 4s. 3*d.* a slight mistake, and according to the construction of the law, as given before you yesterday, the whole invoice may be forfeited. We have made the entry within a week past. The mistake in this instance is, that on the side of the bill of lading there was a charge of £1 3s. 2*d.*, which was not added to the invoice. There were several charges, amounting in all to £44 1s. 5*d.* But it seems that this charge of £1 3s. 2*d.*, which should have been added to our invoice, was overlooked by some negligence. Let the special agent of the Treasury take notice of that, because that whole entry is liable on account of that mistake to be confiscated to the Government, according to his practice.

I wish to call the attention of the Committee to the fact that this dismissed clerk of ours, when he found in his own conscience, and knew perfectly well that his iniquity would probably find him out, and that he would be dismissed from our employment on account of his complication in other matters, to which I will not refer now (but which were also connected with this matter indirectly), went to work to see how he could better himself if he was turned out. A good deal has been said about the fact that this man stood high in position in the store of Phelps, Dodge & Co. This highminded, conscientious young man, who felt that he could not be guilty of standing there and copying on our invoice books the evidence of the guilt of Phelps, Dodge & Co. (that he could not satisfy his conscience to do such a thing), goes to work and deliberately takes from our invoice books, for a year or two, every single one of these papers (holding up a letter press copy of the manufacturers' bills), wherever there was evidence that the goods had cost 6*d.* or 1*s.* more than happened at the time to be put into the invoices, and these he preserved very carefully. He then went to work and tore off a good many more than he had torn off before, which contained the fact that the goods were invoiced at much more than they cost. These he destroyed, I suppose. We never have seen them since. They were torn off our books and are gone.

Now, gentlemen, after all this thing had gone on to this extent, we were met with a proposition that the thing had better be compromised. It was a terrible thing. I had made an offer that if they would look over the invoices, and itemize the undervaluations, we would give a check for the amount, and it was agreed to by the officials at New York, under the advice of Mr. Jayne. They were in conclave there, with the counsel of the special agent. He wishes to have good counsel, and so he secures the eminent member of the House of Representatives who occupies so high a position now. He was in New York all that time. If he was not he was

sent for every day or two. This discharged clerk had made a bargain with the informer to get his share. We understand that the law authorizes the appointment of a special agent, and fixes a salary for him for doing this business, and that, when the information comes, the informer is entitled to the share prescribed by law. But instead of this, in all these cases the special agent makes a bargain with the informer, and he himself becomes the informer, while the other man steps back. What the bargain was with our clerk about dividing the spoils we do not know. We saw such an array of lawyers, and it was so impressed on us that our case was a tremendous one, a dreadful one, and that the goods were clearly and decidedly forfeited to the Government, that we finally agreed to the settlement; and they went over the invoices and told us that the amount we were to pay was \$260,000. It was about the 20th of December that we had our first interview with Jayne, and it was perhaps a week afterward (though the days appeared months as they passed) when we were told they had ascertained the amount—not the amount of duty that was due, but the gross amount of the items which went to make up the undervalued goods, and they said that it would amount to \$230,000. We gave a check for the \$260,000. The next day it was all paraded in the papers. The whole terrible thing came out. Before that it was all kept quiet. But the money was paid and went into court, and then out the whole thing came, and what followed you gentlemen know. After a few days there was a change in the district attorney, and the business lingered along until finally we were informed that by a more careful investigation of the whole matter, they found \$271,017.38 as the total amount of the portions of the invoices said to be undervalued. We subsequently learned that the amount of the undervaluation for five years was \$6,558, and the difference in duty to the Government \$1,658.78. We did not know it till after we got this official document (the letter of United States District Attorney Bliss). If we had known it we never should have paid the money.

And now, before I forget it, I want to do justice to a Government officer who, I think, is entitled to have justice done him in this case. I have regretted very much that, from time to time, ever since the settlement, there have appeared in the papers certain hints which would seem to indicate that the Secretary of the Treasury (Mr. Boutwell) did not treat us fairly in the matter. If we had followed Mr. Boutwell's advice we probably never should have paid this \$271,000. I came on to see Mr. Boutwell. He was sick at his house, and was kind enough to receive me in his room. I stated the whole case to him, as well as I could, in a very short time, and I told Mr. Boutwell that we had looked this matter over with great care; that if it was a matter between ourselves and the Government, or if it was

simply a matter between the courts of the United States and ourselves, and if it were not for the array of power and influence which was behind to make the better appear the worse, we would not hesitate to go into court; but for us to go into court and have a judgment against us for \$1,750,000, and to have it telegraphed all over the world that the Government of the United States had sued Phelps, Dodge & Co. for fraud, and had obtained a judgment for that amount, whatever might be the result afterward, the injury to us as merchants would have been irreparable. Because, however swift the fact may go by telegraph, the result of an after investigation would be very slow to follow. Mr. Boutwell said to me, "Mr. Dodge, I think you had better go before the court, and I will assure you that if it comes back to me, as it will come, whatever may be the decision of the court, I will give the matter personal and careful consideration." I thanked him for it. He knew then, probably, what I did not know, but which, if I had known, I never would have paid the money. I had no knowledge that there was only sixteen hundred dollars involved in the whole case, running over five years, and covering importations to the amount of \$50,000,000. I am not so big a fool as that; but the fact was kept from us, and kept from us purposely. I had no idea of it. I went back to New York and consulted my partners, and I wrote a letter to Mr. Boutwell, which you will see in this correspondence. Subsequently, however, when we saw the influence that might be thrown around this matter, the enormous sum of money depending upon it, and when we thought of the fact that it might go into court and a judgment for \$1,750,000 obtained against us (for the lawyers said that under the law of 1863 the whole invoice was forfeited), we renewed the offer. General Butler stated that he had a letter from Phelps, Dodge & Co., and all that he wanted was the production of that letter to convict them in any District Court of the United States. What that letter could be we had no idea; but at last we got hold of it when the business was settled, and as we read it we laughed. The case was just this: When we imported the first of these very large sheets of tin plate for these cheese vats, in order to avoid the expense and trouble of putting them into boxes, we imported them in bundles, and put around the bundles a strip of galvanized iron, and sent them in that way. The appraiser said, "Now, this is tin; this is nothing but tin plate; but we never had tin plate come except in boxes, and now, to avoid any trouble, you had better write to your folks to have this tin put up in boxes of 200 pounds' weight, and mark on the outside of the boxes the weight and the name of the manufacturer, and then there can be no question in the matter." We wrote to our house in Liverpool, "The Custom House objects to your sending out these large sheets loose and not in boxes, and they require that the tin

shall be put up in boxes of 224 pounds, or whatever sizes they may be conveniently put in, and that the exact weight and the name of the manufacturer shall be printed on the outside, as in the case of other sized tin; and we want you to be very particular to see to that, and not let any more of the large tin come out except in boxes." To that they replied, "We have received your letter in regard to large tin, and see that you have difficulty with your Custom House about it. We will endeavor to follow out your instructions carefully; but if, in any respect, we differ, let us know, and we will fix it." Ah, Mr. Butler had caught us now! You have trouble with the Custom House about the large sheets of tin plate, and we have your special instructions what to do; and if not right, "we will fix it." That, thought, Mr. Butler, will convict you before any court of the United States!

Now, gentlemen, when I came back from Washington my partners and myself consulted very carefully over this matter, and we decided that we had better pay the money than to have a judgment against us of \$1,750,000, and to have that heralded over the world, and to run the risk of having these men using what influence they could to secure the perpetuity of that judgment, because, instead of their receiving \$30,000 each as their share of the moiety of the \$271,000, they would have received each of them over \$100,000, and that was worth working for. And then there was another difficulty which stood right in our face. The question of Mr. Boutwell's being returned from Massachusetts to the Senate of the United States was then just on the eve of being decided, and in a fortnight afterwards, on the 12th March (this was on the 22d February) Mr. Boutwell was elected to the United States Senate. We said to ourselves, "We do not know who is to be Secretary of the Treasury, by whom this thing is to be settled," and we came to the conclusion to renew our offer. We made our offer, and we settled, and we paid the money. We paid the money to get rid of this enormous charge against us, rather than subject ourselves to a forfeiture of \$1,750,000.

We paid the money in ignorance of the fact of the amount we owed to the Government. We never had a bill of specifications; we have not got one to-day; we have got simply the list of the vessels on which the goods were imported. We settled, and this has become the biggest case on record. It is known the world over. We look back upon it, and we think as you gentlemen think, no doubt, that we were fools. We were fools, but there was terror in all these things; there was terror in that first day when we went into that dark hole in the Custom House; there was terror throughout; and this reminds me of another thing which will show the workings of this law, because these gentlemen do not do anything except



within the law. I suppose the detective has the right to use any sort of means he pleases, no matter what becomes of one's feelings, no matter for the feelings of families, wives and children. This man spoke to you yesterday about his heart-broken wife. It seems that he knows something about these feelings. But there happens to be seven of us who have wives and children, and who had a reputation that had been growing up a great many years. We found ourselves dogged by spies every step that we took. We could not have a meeting of our partners in one of our dwellings at night without its being known in that dark hole next morning ; we could not do a thing in our store without its being known ; we could not have our partners or our lawyers in our private office without its being known. I will relate an instance of this. My partner, older than myself (and a more honorable man does not live on the face of the earth than Mr. James Stokes, of New York), has been in the habit for twenty years, as January came around, of opening his desk and clearing it out some rainy day of the accumulation of papers which it contained, throwing them on the floor and having a boy put them in the fire and burn them. He did so on the 8th or 10th of January, and within half an hour we received a letter from our attorney to come directly to his office. We went up there, and he said : "What in the world is the matter ? Jayne is tearing about in a most terrible way. He says that Phelps, Dodge & Co. are burning their papers, and that he will have every soul of them in Ludlow street jail before night." How did he know it ? How did he know that these papers were burned up ? Because he paid a man in our store to give information. He had our second book-keeper in his employment. What he paid him I do not know ; but that he was in his employment I do know. We traced that fellow and turned him out of our store. And where did he go when he was turned out ? where should he go ? He went where he was employed. And where is he to-day ? He is a clerk in the post-office, in the money department—a place obtained for him by the special agent of the United States.

Mr. BECK.—What is his name ?

Mr. DODGE.—His name is Kennedy. But I will not detain the Committee longer with this matter.

Mr. NIBLACK.—It is very interesting to me.

Mr. DODGE.—This is the operation of the whole thing from beginning to end. At my age, having been a merchant fifty years, I desired to die in peace, and when I paid this money I wanted that to be the end of it. But it is paraded from Dan to Beersheba now because other people have been touched. So sensitive was I about this that when my friend, Mr. Schultz, came to me about another case and said that they were going to have an extra meeting of the Chamber of Commerce on the subject, I said : "It is

not a case of mine, and I will not be there, you must get somebody else to preside." But, notwithstanding, our case is held up everywhere—for what? To vindicate these laws and to show the propriety of having men to watch these "infernal merchants." We admit that we undervalued our goods by mistake, by the difficulty of ascertaining the exact market value of these extra goods at the time of shipment, the value being governed by the general value of the goods in the main line of the invoice. In some instances we did send out some of these invoices at 6*d.* or 1*s.*, or 1*s.* 6*d.*; and, I believe, in one case at 4*s.*, on a few boxes, difference from the prices we paid for them six months before. But we did not hide it. We put it directly on our invoice book, where everybody could see it. You recollect, gentlemen, that was a year of the most wonderful fluctuation in the price of metals ever known. The strikes in England, the rise in coal, the enormous rise in iron and tin, made the year remarkable, so that in the month of January, 1872, we paid 28*s.* for tin plate; in the month of July 44*s.* for the same tin, and in the month of December 35*s.* To show the wonderful changes in the price of metal that year I will state this fact: I passed through Liverpool in the early part of the year on my way to the East; I saw all the indications of a great advance in price, and, on consulting my partner, we bought several hundred thousand boxes of tin plate for future delivery. That is what merchants do who think they have got a prophetic view of things. At the same time I went into market and bought seventeen thousand tons of railroad iron for a company of which I was president, although I knew we should not want it for eighteen months or two years. But I bought it at £7 10*s.* and at £7 7*s.* 6*d.*, from two or three different manufacturers. I passed on and went to the East, and returned in about eight months, and when I came back that same iron was selling at £11 10*s.*

Now, gentlemen, I have just told you that we bought very largely of tin plate at lower prices than it was sold for afterward; and I have shown that, with a double pair of spectacles and with the help of our demoralized clerk, the special agent of the Government went carefully over our invoices for five years. Before Mr. Banfield would agree to the settlement he wrote to Mr. Jayne to ascertain exactly what he had done, and what examination he had made into the affairs of Phelps, Dodge & Co. Under date of February 24, 1873, Mr. Jayne replies to that letter as follows:

"In reply to your letter of the 22*d.*, making inquiry in relation to what was covered by my report in the case of Phelps, Dodge & Co., I would say that my investigation covered all the importations of that house for the five years next preceding January 1, 1873, and that



the matters called to the attention of the Government relate to undervaluation of merchandise, as well as to suspected payments of money for damage allowances, during that period.\*

I had forgotten that that last intimation was in that letter, and I should like to explain it. We were accused of using undue influence, and of paying money to an appraiser of the Government for the purpose of securing from him a very large appraisal for damages on a cargo of Russia sheet iron; and we were told by the special agent, or it was told to our attorney, that he had proof of that fact, and we got him to name the ship in which the damaged iron had been imported. We first got him to fix the date when we paid the money, or when he said we had paid it (and which we had never done), to induce the appraiser to give us a large percentage on the Russian iron. The Committee know that the beauty and value of Russian iron consists in its polish, and if it gets blemished or rusted, it is not worth any more than common iron. We had a large deduction made in this case, but not more than we should have had. We found out why it was said that we had paid this money. It was because the clerk said he found a check upon our book somewhere for a thousand dollars, and he believed (although there was nothing to indicate it) that that check was drawn in favor of some agent of the Government. But we got the name of the ship on which the iron was imported, and on which this tremendous allowance was made for damages, and we found that the ship sailed from St. Petersburg six months after the date when he said the money was paid.

Now, Mr. Jayne says he went carefully over all our invoices for five years, and that he found \$6,658 of undervalued goods, and that the duty on these undervalued goods, at 25 per cent., would have amounted to \$1,664.68. But he did not say that he found anything else; he did not say that he found anything to mitigate that. Now, I want to say to this Committee, that our books show, and I can prove it (here is the whole collated evidence of it), that we paid on one single contract that year, to the Government of the United States, through our own overvaluations of

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\* What these investigations, covering a period of five years, and made by Jayne with free use and control of all the books of Phelps, Dodge & Co., and assisted by one or more of the dishonest and discharged clerks of the firm, amounted to, is conclusively shown by the following extract of a report on the subject made by Geo. Bliss, U. S. District Attorney, to E. C. Banfield, Solicitor of the Treasury, under date of January 2d, 1874:

"There is no actual evidence of any fraud prior to January, 1871. The books neither before nor since contain any evidence of fraud, but it is found in the memoranda already referred to and in duplicate (true) invoices. Of invoices entered since early in 1871, which are tainted with fraud, the total value is \$1,726,060. The items in these invoices in which undervaluations occur amount to \$271,017 23, while the amount of undervaluation is \$6,658 78. The total amount of duties lost to the Government was \$1,664 68. The total importations of the defendants are about \$4,000,000 a year."

goods over the price that we paid the manufacturers for them, \$58,000 more than we would have been obliged to pay had the articles in question been assessed, with duties on their original cost; and that during that year our total importations amounted to \$8,500,000. We voluntarily added to the invoices of the goods which were sent from Liverpool \$260,000 odd in that year to the cost of our tin, on which overvaluation we paid the Government 25 per cent. duties.

Now, gentlemen, if you can suppose for one moment that Phelps, Dodge & Co. deliberately, systematically, intentionally started to defraud the Government of the United States out of the paltry sum of \$1,600 by undervaluations in the course of five years to the amount of \$6,000, when upon a single contract we added \$58,000, and in a single year \$260,000 to the cost of our goods, then I do not know what you would do with evidence.

Gentlemen, I submit this case to you. If I were to go on further I should probably occupy much more of your time, and perhaps I have already occupied more than I should have done, but this matter has been on my heart pretty strongly for the last twelve months.

The Committee then adjourned till half past seven P. M.

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The Committee met at half past seven P. M.

Mr. DODGE continued his statement. He said: Mr. Chairman, I trespassed so long upon the patience of the Committee this morning that although I have many things I should like to refer to, I propose to say but a very few words additional, and then give place to other gentlemen.

From the first fall of the thunderbolt in the little gas lit room on that day to which I have referred, up to the present time, great stress has been laid on the assumption that no one for a moment suspected that I, as senior member of the firm, had any knowledge of irregularities in our office, thus by implication placing the pretended fraud on some other members of my firm. But whatever responsibility there may be we will stand or fall together.

We are all one family, consisting of brothers-in-law and our sons; and as parents we thank God that none of our sons are capable of attempting to defraud the revenue. They are all independent of any motive to such an act; and the three seniors, after maintaining an honorable position until we have reached nearly three score and ten, with God's blessing on our honest labor, having enough without stealing, intend to go down to our graves leaving our children the inheritance of an unspotted reputation, save that stain which the Government has attempted to inflict.

Mr. Chairman, I would like to say one word as to the effect of this system on individuals who are *struck* (as my friend Schultz says). I only hesitate for fear of seeming to bring personal trials before the public, but I can in no other way so well illustrate the injustice of these laws.

My partner, Mr. Daniel James, was from Central New York, if not in the district of your member, Mr. Roberts, yet very near; the son of an early settler, a worthy farmer; when a boy he came to our city, obtained a situation in a store, was faithful, industrious and enterprising. This secured for him in few years the position of a partner; soon after he married a daughter of Mr. Phelps, subsequently joined the firm and removed to Liverpool, where for over forty years he has been the resident partner, sustaining the character of a high minded, respected and honorable merchant, and for a number of years past the oldest American merchant in England; his name a synonym of honesty and uprightness, and shedding a lustre on his own country and American merchants; gratified by the honors conferred abroad, but ever looking with pride as an American citizen for protection to his own country. In all this time not a question had ever arisen as to the vast shipments made to the house in New York. On entering his office one day in December, 1872, he found the following dispatch in leaded lines in the newspapers:

"PHELPS, DODGE & CO., NEW YORK.—This great firm have had their books and papers seized by the United States for alleged frauds on the revenue to the amount of \$1,750,000."

I will not attempt to describe the feelings of such a man. I will simply say that the shock came well nigh killing him, nor has he ever entirely recovered. He felt that a life long reputation, dearer to him than aught else, had been struck down in a moment by his own Government, on which he had depended for protection. He had passed his three score and ten, until then with an unblemished character, and felt that at least he had a right to demand that he should be "considered innocent till proved guilty." Can a law liable to produce such results be just?

I would like to say one word with reference to substituting a specific in place of an *ad valorem* duty on tin plate. It is the general feeling of the trade that such a modification of the duty is entirely practicable and desirable. Very careful examinations have been made by several in the trade, going over the last three or four years, and making a table of all the different kinds of tin imported and their weights, and the conclusion is that if tin plate was subjected to a specific duty of one cent a pound, including the weight of boxes, it would be an equivalent of the present *ad valorem* duty of 15 per cent., probably a little higher. It would make a difference of a few hundred thousand dollars in favor of the Government and against

the manufacturers, but it would at the same time remove the great difficulty that is constantly arising as to home values.

Referring to the matter of our clerk, I want to add that if that very honest clerk, who was referred to so kindly by Jane, had apprised any member of our firm that there had been in his opinion any irregularity in the manner of shipping the tin on the other side, we would have availed ourselves of the privilege given us in our oath, and so informed the Custom House. This is what he ought to have done if he was an honest young man.

And now, in conclusion, gentlemen, I would say with all frankness, not as one suffering from a sense of injury, but as one who has always stood by the Government, fulfilling to the utmost every claim incumbent on a good citizen, that unless something is done to reassure the confidence of the importing merchants very soon, they cannot be expected to continue their business. A very few years of the present system of Custom House business will suffice to drive American merchants from the field and transfer the importing business to unnaturalized foreigners, who, keeping no books in this country, will, after making their money, return home to spend it. Then, with our American merchants driven from commercial pursuits, we shall present to the world the sad spectacle of a great country without a mercantile marine, its commerce handed over to be prosecuted by strangers.

Gentlemen of the Committee, I trust that you will keep clearly in your minds that the Government admits—

1st. That the total amount of importations by Phelps, Dodge & Co., in the five years ended 31st December, 1872, was \$30,000,000.

2d. That in a careful examination of these importations, it found some articles in different invoices which it claimed were undervalued, and that the total amount of these invoices was \$1,750,000.

3d. That the total amount of the articles claimed to be undervalued was \$271,017 23.

4th. That the total amount of the undervaluation claimed was \$6,658 78.

5th. That the total amount of duties claimed to be lost was \$1,664 68.

These facts do not furnish the least evidence of intent to evade the customs law, especially when taken in connection with the fact that in one of these years we paid duties on over valuation of our invoices of over \$260,000 to make them equal to market value. In the light of this investigation we claim that the Government cannot have lost a dollar by alleged undervaluation, for they collected the same duty that they would have received if the goods had been purchased at the date of the invoice, viz., the market value at the date of shipment. Our error was in entering them at a fraction less than contract cost, in trying to meet market value, and that only

to an extent so small compared with the large amount invoiced above cost as to preclude all idea of wrong intent.

Any law that could be construed to make us liable to the confiscation of entire invoices of the value of nearly \$2,000,000, and compel us to pay \$271,000 for fear of a greater danger (even though in the light of present facts we admit we made a great mistake), should not be permitted to remain in force.

I am very much obliged to the Committee for the kindness with which they have listened to me.

MR. KASSON.—I wish to be perfectly clear as to one of the points made by you. I mean what is known as the owner's oath, made at Liverpool by somebody. By whom in the case referred to was that made?

MR. DODGE.—By Mr. Rees, the English partner of our house. The houses are identical with this exception. The firm of Phelps, James & Co. consists of all the American partners, together with the English members there, and while we have an interest in everything there, they have no interest in anything here.

MR. KASSON.—Then that owner's oath called only for the actual cost?

MR. DODGE.—It calls for cost, while the consignee's oath is for value—for market value.

MR. KASSON.—There was exhibited to us what are called rightly or wrongly the duplicate invoices, which seem to have been detached. Were those duplicate invoices forwarded to you subsequently to the shipment or at the time?

MR. DODGE.—At the time, always.

MR. KASSON.—By this same partner of your house?

MR. DODGE.—By the firm of Phelps, James & Co. The business letter is generally written by the senior partner, Mr. James, while the active business is done by the junior partners.

MR. KASSON.—This certificate of the Consul speaks of the alternative of actual cost or market value. Does the owner or shipper himself make oath to the market value in case where he has purchased the goods, or does he simply give in the oath, known as the owner's oath, the actual cost?

MR. DODGE.—He gives the actual cost. That is the design of it.

MR. KASSON.—And the market value is sworn to when they are shipped, otherwise?

MR. DODGE.—Yes, sir; when they are consigned. But, as I stated to-day, and as the gentlemen will all understand, it is utterly impossible, as there is no other oath, that where we put up the price of our goods above cost we had to take that oath. But where we did it we stated to the Consul that the goods cost so much, and we put them up so much, and we only took the oath for the purpose of shipping the goods.

Mr. KASSON.—There is precisely the point. But why do you have in that case to swear to the market value at all?

Mr. DODGE.—We do not, sir.

Mr. KASSON.—Then where is the difficulty of swearing to the actual cost of any goods? I do not speak of your case, but in the case of any merchant?

Mr. DODGE.—It is just here. If we swear to the actual cost of 30s., and our invoice called for tin at 30s. when it came before the appraiser here, if, knowing, as he should, that the price was—through a rising market—36s. or 37s. in Liverpool, the valuation of our goods would not merely be increased to the amount of the rise, but we would incur the penalty for undervaluation.

Mr. KASSON.—Does that follow necessarily?

Mr. DODGE.—Yes, sir.

Mr. KASSON.—If you make a statement as to what they actually cost, and swear to it, if that is true, do you mean to say—

Mr. DODGE (interrupting).—I mean to say that if we should import tin that cost 30s., bought on previous contract at 30s. in Wales, and deliverable in Liverpool, as seven eighths of all our goods generally are, and the market price at time of shipment had advanced beyond 30s., if we invoice them at 30s. we should not only have our goods advanced to market value, but should be also subject to the penalty for undervaluation.

Mr. KASSON.—If you also stated the market value as different from the cost price, so that there was no concealment?

Mr. DODGE.—I never have known an invoice made out with two prices.

Mr. KASSON.—But the law calls for a statement of the actual cost. That is, what is known as the owner's oath.

Mr. DODGE.—Yes, sir; that is true.

Mr. KASSON.—Does the law involve the merchant in this difficulty—that if he swears to the actual cost, and the appraiser at New York finds that the market value is different, about which there can be no misrepresentation by the merchant, the merchant is liable to a penalty in that case?

Mr. DODGE.—That is so invariably. It is just the difficulty. There would be no difficulty in entering our goods always at cost if it was not for this ruling at the Custom House.

Mr. KASSON.—Do you have to make any oath in that case as to the market value at all?

Mr. DODGE.—No, sir.

Mr. KASSON.—You cannot refer to the law which puts the merchant in that condition, can you?

Mr. DODGE.—I had the two oaths here to-day.



Mr. KASSON.—But the other oath, I mean.

Mr. DODGE.—I do not know the law reference. There are two oaths. One is known as the owner's oath, and then there is the consignor's oath.

Mr. KASSON.—The consignor's requires the market value?

Mr. DODGE.—Yes, sir; and the owner's only the actual cost.

Mr. KASSON.—I see at once how the consignor's oath may subject him to difficulty if the appraiser thinks differently of the value, but where there is no evidence in the appraiser's hand against the cost price which the merchant gives in his oath, I was not aware, and, consequently, your statement is a surprise to me that he is subjected, in consequence of the difference between the actual cost and the market value, to forfeiture.

Mr. DODGE.—Not to forfeiture, but to a penalty.

Mr. KASSON.—That is the nature of it; and, if it is so, we certainly ought to make a note of it.

Mr. DODGE.—You will find that it is so. For that reason we always put up our goods, and frequently, as I mentioned to-day, in the change of market price between the time the invoice is made in Liverpool and the time of the arrival of the steamer here, the wires will give a change in the market value there that the appraiser knows here at once; and, if we think the difference is 2s. and find it to be so, we add 2s. to our entry.

Mr. KASSON.—You enter the goods at the market value, but you do not swear to that market value?

Mr. DODGE.—The only oath that we can swear to—the only oath they have in the Custom House—as owner of the goods is, that we swear that that is the actual cost. As I have mentioned to you, my partner, Mr. Stokes, said about two years ago to the deputy collector, who asked him to swear to an invoice on the cost: “I state to you that we advanced it in England 6s., and now, in order to be sure of the market value, we have added 2s. more to the entry.” He said: “Mr. Stokes, it means nothing more than that. It is all right.” It is quite time, gentlemen, that the oaths were changed.

Mr. BURCHARD.—If you have knowledge that the actual price is higher than the invoiced price, is it not your duty under the law, or the duty of a merchant, to inform the Collector and have the invoice corrected?

Mr. DODGE.—We always do it.

Mr. BURCHARD.—Then it is not liable to forfeiture, is it?

Mr. DODGE.—O, no, sir. I have not myself personally attended the Custom House for some ten or fifteen years, but there is a certain percentage. If the appraiser raises the value of the invoice above such a per cent., then there is a penalty of twenty per cent. added.



Mr. KASSON.—I recollect the law as to that, but my object was to see what connection it has with the owner's oath.

Mr. DODGE.—The difficulty is the constant variation between cost and market value.

Mr. KASSON.—I think the whole Committee understand the difficulty about that question. My point was to see how your oath became involved in that.

Mr. DODGE.—The oath ought to be changed. I think it is the old oath of 1799.

Mr. KASSON.—There was one other point, so far as your personal explanation is concerned. I have an impression from what you said that you have encountered, in the settlement you made, a member—one or more members—of Congress, who united to make a pressure upon you. Did I understand you correctly?

Mr. DODGE.—I did say one or more. I did not say they had united to make a pressure. I said that the fact that they were in conclave with these men, who were interested in collecting the largest possible amount of money that they could get, went to add to the terror.

Q.—You were aware of it at the time you made the settlement?

A.—Certainly. We knew that they were in town. There were no less than five attorneys constantly consulting with those men.

Mr. BURCHARD.—Perhaps it was my want of attention which did not enable me to understand whether the invoices were made out invariably at the market or cost price. Which did the memorandum show, market or cost price?

Mr. DODGE.—The little memorandum that was sent out with those few boxes of extra tin represented the cost price from the manufacturer.

Mr. BURCHARD.—The contract price?

Mr. DODGE.—Yes, sir.

Mr. BURCHARD.—And the invoice represented, as I understand you, the market price?

Mr. DODGE.—The market value, as near as we could get at it. The difficulty is greatly increased from the fact that we are obliged to buy our tin, in order to supply our customers, on very large contracts, and they are coming along from week to week, some from one manufacturer and some from another. We put them in the warehouse at Liverpool, where we sometimes have 50,000 boxes piled up. We send them by steamship and have arrangements with the various lines to give them an amount of dead weight which will be satisfactory, and do not frequently know the amount they may require until within a few hours of the sailing.

Mr. BURCHARD.—You say that sometimes the contract price was above

market value, as in the case of those that were produced and brought up against you, and in other cases the contract price was below?

Mr. DODGE.—I was going to say that there were five times as many instances, by actual examination, where they were above as where they were below.

Mr. ROBERTS.—I wish to ask a question upon the matter of the two distinct oaths. There is an oath which the owner takes and also an oath which the consignee takes?

Mr. DODGE.—Yes, sir.

Mr. ROBERTS.—The one is expected to state the cost price distinctly, is it not?

Mr. DODGE.—It so reads.

Mr. ROBERTS.—I am speaking of the oath as it reads now.

Mr. DODGE.—Yes, sir; it so reads.

Mr. ROBERTS.—The other states the actual value?

Mr. DODGE.—Yes, sir.

Mr. ROBERTS.—Would there be any difficulty, in the case of an owner desiring to state the market value, to combine with the owner's oath the statement that he does include the market value as part of the oath?

Mr. DODGE.—I do not believe that a Consul would feel himself authorized to administer any oath other than the one prepared by the regulations of the Treasury Department.

Mr. ROBERTS.—I understand you to say, then, practically there is but one form of oath taken by the owner?

Mr. DODGE.—I never have known but one, sir.

Mr. ROBERTS.—Then, does it make any difference in the fact that your house abroad were the owners of this tin, as to the increase in valuation? Was it because you were the owners abroad that you felt at liberty to add to the value or to reduce the value of the tin?

Mr. DODGE.—As I stated before, the object in increasing the price was to conform to the market price, so as to pass the entry here without any difficulty with the appraiser.

Mr. ROBERTS.—Exactly; but because you were owners abroad your foreign house felt at liberty to make that price accord with the market value?

Mr. DODGE.—That was the practice of the house. But we have admitted that, probably, so far as placing it below, in some cases sixpence or a shilling, we erred; we should have been more correct.

Mr. ROBERTS.—Let me change the form of my question. If this had not been owned abroad—if you had had no foreign house—would you have regarded that as making any difference in the form that you should have adopted in the entry?

Mr. DODGE.—Then we should have made the entry with the oath of the consignor of the goods, because then we should have been consigning from the house in the foreign country to the house here.

Mr. ROBERTS.—Then I do understand you to say that the fact that you had a foreign house was really the occasion of this difference in statement?

Mr. DODGE.—Well, I suppose so, sir.

Mr. ROBERTS.—Perhaps you will be kind enough to answer this question directly, Whether the fact that you had the foreign house, which was the purchaser of this tin, made any difference in the form of the entry?

Mr. DODGE.—The distinction of the house, as I have mentioned before, led them to feel, probably, that they were authorized in that respect, being an English house, to make the change. That is what I meant to say.

Mr. ROBERTS.—So I understand you to say; but I desired to get it a little more particularly. May I ask what is your present impression of introducing tin in like cases, if the value is greater or less than the cost?

Mr. DODGE.—There has not been such fluctuations within the past year, but we are now in every case entering our goods at cost, and then having whatever change is made made here, in order to conform to the market, unless there should be such great variation as there has been. Then there would be no other safety for us; we could not ship the goods to this country unless we should make the advance.

Mr. KASSON.—Let me read the law: "The party making an entry, at the time when he produces his invoice and makes entry, and not afterward, may make such addition to the cost or value given in the invoice as in his opinion shall raise the same to the actual market or wholesale price of the merchandise at the period of exportation to the United States in the principal market of the country where it is imported." I understand Mr. Dodge to say that they were made out upon the other side in some cases, instead of being made out at the time of the entry.

Mr. ROBERTS.—Yes, that is what I understood. State whether these papers, which are called duplicate invoices, were any different from the ordinary memorandum bill which would be sent from the manufacturer to the factor.

Mr. DODGE.—They were the actual bills themselves, put under a copy press and pressed out, and sent in the hurry of shipment in place of making duplicates, and that is all the difference.

Mr. BECK.—I wish to put to you this case. Suppose you had, from any cause, been able to purchase goods in Manchester, Liverpool or London, for 10 per cent. below the market price, either because you had found a man in danger of insolvency, or from any other cause, who desired to sell you goods at 10 per cent. below the market price, while all the other

merchants were buying at 10 per cent. more than you, could you have safely entered with the Consul those goods, thus bought at 10 per cent. below the net market price, and brought them here to New York?

Mr. DODGE.—No, sir.

Mr. BECK.—Why?

Mr. DODGE.—For the simple reason that the cost price, if this was only an isolated case, would be 10 per cent. below the market value.

Mr. BECK.—But if that form of oath alone requires you to swear to the truth, the truth would be that you had paid 10 per cent. below the market value for them.

Mr. DODGE.—If we entered them (if there was the difference of 10 per cent.) at actual cost, we should at once apprise the firm here that there was to be added, when it came here, the difference to the entry, in order to make it market value.

Mr. BECK.—Is the market value required in the oath?

Mr. DODGE.—Not in the oath of the owner, but in the oath of the consignee when it is consigned. But when it comes over every invoice must go before the appraiser, and these appraisers receive weekly, or ought to, the prices current from all the principal markets in Europe for all the different articles they have charge of, and they have a circular, which is issued weekly in London, of the prices of tin plate, and are supposed to have it in their hands to know the price of tin plate.

Mr. BECK.—So that your habit was, if you bought goods, say on the 1st of April, to be delivered on the 1st day of July, in Liverpool, and the price had gone up 10 per cent. above what you had actually purchased it at, to enter it on the 1st of July at the ten per cent. advance with the Consul there?

Mr. DODGE.—Yes, sir; that was our habit.

The CHAIRMAN.—I apprehend if we should trace the cause of this difficulty we should find it in this, that the oath was adopted at a very early day in the history of our customs system, and that modifications of the law have taken place which have disjoined the oath and the law.

Mr. BECK (to Mr. Dodge).—Have you stated, or have you memoranda that show, or had you any means of showing, when your books were mutilated by your clerk, how much would have appeared upon your books if all the items had been given that had been overvalued as well as undervalued? I understand your clerk only exhibited the undervalues.

Mr. DODGE.—As far as we can ascertain he took the great proportion of all of them off, although in some cases, where they were actually the same and no change in the market, these were left. But where the invoiced price was below the cost a sixpence or so, those were very carefully taken and

preserved, and handed over to the special agent. In cases where the invoice price was above the cost they were torn off from the books, and the place where they were torn off can be shown on our invoice book.

MR. BECK.—Have you any means of showing to what they would have amounted?

MR. DODGE.—I do not know but that we might have. I have never looked at it at all. Neither should we have had the other data excepting that our English house, as soon as they were apprised of this difficulty, immediately sent us out a statement which I had here this morning—the rates to which they had advanced the tin—and showing the enormous difference between that and any little difference the other way. That I have brought here. It is at the service of the Committee.

MR. BECK.—Do I understand you to say that in the course of five years, the time for which your books were investigated, your importations were some forty millions, and duties of eight or ten millions paid, and that there was only about \$6,000 of undervaluations of goods and about \$1,600 of duties unpaid in all that time?

MR. DODGE.—That is it, sir; that is the actual return.

MR. BECK.—In five years time?

MR. DODGE.—In five years time.

MR. WALDRON.—Five years preceding the 1st of January, 1873?

MR. DODGE.—Yes, sir. Mr. Jayne says: "In reply to your letter addressed to Mr. Bliss, making inquiry as to what was covered by my report in the case of Phelps, Dodge & Co., I would say that it covered all the importations of that house for five years next preceding the 1st of January, 1873."

MR. WOOD.—Mr. Dodge, I have a few questions to put to you, and I will say, before commencing, that they are put for the purpose of eliciting information from you, as an old importing merchant of New York, and not for the purpose of criticising your own case, or investigating it, because I do not think that this is the proper place or time to do that. I understood you to say to-day that no account was taken of the market value, either at Belfast or Liverpool, or at Penang or Singapore. What did you mean by that, that no account was taken of the market value? Did you mean at the New York Custom House?

MR. DODGE.—I was not aware that I made that statement.

MR. WOOD.—You said no account was taken of the difference of value in goods shipped either at Belfast, Liverpool, Penang or Singapore.

MR. DODGE.—I was speaking of block tin, and I mentioned that, as a general thing, the markets at Singapore and Penang were identical, and that when we, for the purpose of shipping by an American vessel, sent tin over from Singapore to Penang, or *vice versa*, just as there might be an American

vessel loading, as the market value was usually the same at both places, whatever it cost to carry from one place to the other was not added to the invoice.

Mr. WOOD.—Then the charges of transportation from Penang to Singapore were not regarded as making an increased market value at the place of exportation?

Mr. DODGE.—If they had been added we should have paid duty on the increase.

Mr. WOOD.—I want to know what the custom or fact is?

Mr. DODGE.—As to the fact, outside, I do not know what that——

Mr. WOOD (interrupting).—You spoke of Belfast.

Mr. DODGE.—I simply spoke of a case that came before the Treasury for adjudication. It was on an invoice of linen at a given price, and the oath was taken before the Consul at Belfast. If for the purpose of securing a better freight, or more rapid transit, they were sent by steamer from Belfast to Liverpool, and then shipped, there was no addition to the price, because the voyage of exportation was considered as beginning at Belfast, where the consular oath was taken. The Treasury Department ruled here, if I am not mistaken, that where the consular oath was taken there was to be no addition.

Mr. WOOD.—How was it in your own case, where your goods, for instance, that are made in Wales are shipped at Liverpool for New York. The market value in Wales is the market value of the invoice in Liverpool?

Mr. DODGE.—As I mentioned before, I suppose seven eighths of all our contracts with the manufacturers, for the last five or six years, have been made deliverable in Liverpool.

Mr. WOOD.—At their own expense?

Mr. DODGE.—Yes, sir.

Mr. WOOD.—And risk?

Mr. DODGE.—Yes, sir. We pay so much for them delivered in Liverpool. The cost, I suppose, by coaster from Monmouthshire, is about three pence a box.

Mr. WOOD.—Then your invoices are made up in Liverpool by your own house there?

Mr. DODGE.—Yes, sir, always; and the only mistake that we have made, in the light of the decision of the Secretary of the Treasury, was that if, when our goods left Monmouthshire, we had gone before the Consul at Cardiff and sworn to the invoice, there would have been no doubt about it.

Mr. WOOD.—Then your invoices are made up in Liverpool, although your goods are bought in Wales, and sent, at the cost and at the risk of the manufacturer, to you to Liverpool, the port of exportation?



Mr. DODGE.—Yes, sir.

Mr. WOOD.—Your bills of lading are made up there. When are those bills of lading made up? For instance, the steamer is going to sail at three o'clock for New York, at what time of the day, and probably at what hour, are your bills of lading made up?

Mr. DODGE.—If possible, we always get our goods on board the day before, and then the young men are at work, as busily as possible, up to about twelve o'clock, in getting the duplicate invoices and bills of lading all ready before the hour of sailing.

Mr. WOOD.—Twelve o'clock of the day of sailing?

Mr. DODGE.—Yes, sir. The rule is that the oath must be taken by one o'clock.

Mr. WOOD.—Are not invoices made up before you receive from the ship bills of lading?

Mr. DODGE.—I should say, as a matter of fact, they were almost always. After we find out just how many boxes are on board the bill of lading is made up and signed.

Mr. WOOD.—I ask for this reason, I want the gentlemen of the Committee, who probably do not know so much of these matters as you and I, to know that in making up a bill of lading at Liverpool, to go in the same steamer by mail, that is often done in advance of the sailing of the steamer, and that in no case will a bill of lading be signed until the goods are actually on board the vessel.

Mr. DODGE.—That is so.

Mr. WOOD.—Now, may it not occur in this connection, that there may have been charges upon a bill of lading, which is an element of the cost, and that they do not reach the invoice, and are not put upon the invoice as an element of its cost?

Mr. DODGE.—My own impression is that with the constant making up of the invoices all the time there are none of our young men in the office who do not know the amount of the cartage from the warehouse, and the number of loads, from the uniform cost, day after day, of doing it. If there are so many boxes they divide it by such a number, taken by each dray, and they have no difficulty in arriving at what is the proper amount of charges.

Mr. WOOD.—You stated a case here to-day in which you showed a bill of lading that had a charge of five shillings or five pounds, I forget which, which was not included in the invoice, and which was made the subject of charge against you.

Mr. DODGE.—In examining the entry it was on the bill of lading.

Mr. WOOD.—But not on the invoice?

Mr. DODGE.—It was not on the invoice. Our young man omitted to see the discrepancy in time.

Mr. WOOD.—In Liverpool?

Mr. DODGE.—He ought to have seen it here. He ought to have seen the discrepancy between the amount added for charges and the amount that was on the bill of lading. The bill of lading was correct, but there was three and sixpence difference between the amount on the bill of lading and the amount on the invoice.

Mr. WOOD.—What would be the result in the Custom House in New York, if in Liverpool, as well as in New York, some charges put upon the bill of lading in Liverpool had been omitted in the invoice; what would have been the result if, in consequence of that omission, the goods had been seized?

Mr. DODGE.—That depends entirely, I suppose, upon the final decision as to intent.

Mr. WOOD.—It would be subject, under the law, to seizure?

Mr. DODGE.—Certainly, sir.

Mr. WOOD.—If that omission was twenty-five cents, the principle would apply as much as if it was a million dollars?

Mr. DODGE.—I do not know that the law makes any difference. It would make a difference, probably, in judging of the equities of the case and the probabilities of fraud.

Mr. WOOD.—You spoke this evening in favor of specific instead of *ad valorem* duties. Did we understand you that that applied simply to the goods you imported or to the system?

Mr. DODGE.—It applied to everything where it could be done—every case which will prevent a fraud.

Mr. WOOD.—You, as a merchant of experience, give that as your opinion?

Mr. DODGE.—I have not a doubt about it.

Mr. WOOD.—Why do you prefer that system?

Mr. DODGE.—Because you do away with this perplexing question of cost and market value, and there will be no difficulty in making your invoices at cost at once. It gets rid of the whole difficulty of charges and everything else.

Mr. WOOD.—And you are in favor of it as a general system? Of course it could not be applicable to everything.

Mr. DODGE.—Of course not; but so far as it can be done it would simplify the whole thing, and the business of the Custom House. It would relieve the merchant from a great anxiety. There is no pleasure in doing business now, and there has not been for years.

Mr. WOOD.—Did you examine the English system while you were abroad?

Mr. DODGE.—I did not.

Mr. WOOD.—Have you ever given any reflection, or have the old mer-

chants of New York ever given any reflection to the proposition of levying these duties, so far as we can, upon American values in place of foreign values?

Mr. DODGE.—There has been a great deal said about it ; but I think there is more difficulty in ascertaining what is the real American value of foreign products than the market value of the same goods in the country from which they are shipped.

Mr. WOOD.—You have come to no conclusion yourself?

Mr. DODGE.—My own impression is that there would be very great difficulty in a home valuation. For instance, take the price of iron in Great Britain. It is regulated by an association, and has been for the past five and twenty years. That association meets every quarter, and they fix a price, and that price is the uniform price. Of course there is a variation, but that is the general understanding. If a man should order five hundred tons of iron at quarter day, he would expect to pay the price at quarter day, and that would be called the market price.

Mr. WOOD.—The goods that you import are of a staple character generally, are they not?

Mr. DODGE.—There are certain sizes of tin plate that are, but, as I mentioned to-day, there have sprung up within the past few years very large manufactories in this country of articles made from all sizes of tin plate ; consequently they have to be ordered specifically for the manufacturer according to his business. You cannot go into the market and buy them. There is no way but to order them.

Mr. WOOD.—I wish to ask your opinion also upon another very important question. We have a system in New York, extensively carried on of late years, of allowing the merchants to have their own bonded warehouses, where goods are bonded and kept in possession of the merchant, he giving bonds, of course, to the Government in the proper penalties for violation of his obligations, but yet they are private bonded warehouses. What is your idea of that system?

Mr. DODGE.—My impression is that it is open to risk.

Mr. WOOD.—You think it is liable to very great abuse?

Mr. DODGE.—I think there is more opportunity for it—a great deal.

Mr. WOOD.—Did you ever hear it discussed among the merchants?

Mr. DODGE.—O, yes ; very often.

Mr. WOOD.—With reference to the machinery of the Custom House, do you not think that it might be very materially simplified, and a large number of the force employed done away with?

Mr. DODGE.—Do you mean as the laws now exist, or under better laws and specific duties?

Mr. WOOD.—I should like your opinion as to the existing law, and also as to the changes, and what could be effected by them.

Mr. DODGE.—I was under examination by a Committee at the Custom House some years ago, and I tried to give a very honest description of what I thought was the then state of the Custom House, and my own impression is that those who eluster around the Custom House have never thanked me for it, to say the least. If I should give any opinion about it, it would be exactly what I gave then, only a little more so.

Mr. WOOD.—What is your opinion with reference to the system of moieties?

Mr. DODGE.—Well, sir, I cannot conceive it possible that such a system can continue in a country like ours, and under the present arrangement, where special officers are empowered to act as spies and detectives, and to use such means as they think right and proper to secure their own ends. I cannot see that it is possible for a regular merchant to continue his business with any safety, for this reason, that the inducement on the part of the special agents to entrap him is so great. These men are perhaps desirous to do no wrong, but still they are very anxious to secure their large moieties. They feel that they have a rich placer and they want to dig while it is in their power. There is great danger of their assuming that there has been fraud where there never had been. Thus, the very taking of the books and papers of a merchant who has maintained an honorable standing, and whose reputation and credit depend upon his moral integrity as well as his capital, and the holding that man up to the country as having defrauded the Government, and assuming that he is guilty until he has an opportunity to prove his innocence, may ruin him. His credit is gone, his capital is gone; he has spent his life in building up a reputation that the Government has stricken down by reason of a mistake made by a detective. No American merchant will submit to it or live under it.

Mr. WOOD.—Do you not think, upon the other hand, that the allowance of an additional inducement to a proper, vigilant and experienced man, would be an advantage to the revenue?

Mr. DODGE.—It might possibly be an advantage to the revenue directly; indirectly, an utter loss of confidence on the part of the merchant. If proper confidence cannot exist between the mercantile community and the Government there will be no such thing as a revenue, except what may be acquired from foreigners. I do not wish to be misunderstood. The Government should have carefully prepared laws, and it should pay a salary to men sufficient to induce them to do their duty. It should have intelligent men, men of high character and standing in the Custom House, not having

a Custom House simply and solely for the purpose of making places for men who know nothing about business, and have never had a particle of business experience.

Mr. WOOD.—Could you suggest any improvement in the law with reference to seizures of books and papers?

Mr. DODGE.—I could suggest but one, and that is the entire abrogation. It does not belong to a highly intelligent people. It is a remnant of the dark ages and belongs to them, and not to us.

Mr. WOOD.—Could you suggest anything with reference to the confiscation of an entire invoice by the fraudulent violation, so to speak, if you please, of one component article of the invoice?

Mr. DODGE.—The gentlemen, I believe, of the legal profession, believe that the penalty should bear some proportion to the crime. I had invoices to-day here, where, under the law, they would be confiscated for between \$20,000 and \$30,000 for a mistake of \$20. Outside of customs matters there is no law upon the statute books that knows any such thing.

Mr. NIBLACK.—I understand you to say that with a specific duty all this difficulty about the Custom House oath, even in its present form, would be relieved?

Mr. DODGE.—That is, only so far as it is possible to have specific duties extend.

Mr. NIBLACK.—I mean as regards your trade.

Mr. DODGE.—Yes, sir.

Mr. NIBLACK.—If one cent a pound was assessed upon tin plate, you would then have no difficulty in regard to customs?

Mr. DODGE.—Of course there must be the necessary checks to see that the proper quantity is received and the proper weight given. There is no difficulty about that.

Mr. NIBLACK.—Yes, sir; but there would be no difficulty about the cost price and the market price?

Mr. DODGE.—Not at all.

Mr. WALDRON.—I understood you to say that if the value had increased from the time of the shipment of the tin in Liverpool until its arrival in New York, the increase in value was to be added in making the entry here for the purpose of assessing the duty?

Mr. DODGE.—That is the uniform rule with our Custom House in New York.

Mr. WALDRON.—Suppose there had been a decline in the value from the time of the shipment until its arrival?

Mr. DODGE.—Then no change is made. The law does not know that.

Mr. WALDRON.—You spoke about having paid \$56,000 on single importa-

tions over and above what was the fair duty to have been paid the Government. How did that arise?

Mr. DODGE.—I think I stated that it was \$58,000 on a single contract with one manufacturer—not in a single invoice. We never had an invoice as large as that.

Mr. WALDRON.—Did that arise from the fact that the market value was below the contract price?

Mr. DODGE.—No; the contract price was a great deal below, and we added to it to make it equal to market value. Tin plates that cost 32s. 6d. were invoiced at 40s.

The CHAIRMAN.—In speaking of the one cent a pound duty upon tin, which is the duty you suggested, I understood you to say that it should embrace the weight of the boxes also, and then it would yield, in your judgment, an increase of the revenue?

Mr. DODGE.—Yes, sir.

The CHAIRMAN.—Would you say one cent a pound for the boxes, too?

Mr. DODGE.—In order to bring it up to that. If we simply took the weight of the tin it might come below the present duty. It was found, from a careful calculation, that by adding the weight of the box it would make between five and six hundred thousand dollars more. I think in the case of last year, tabulating the different sizes and taking their weights (because every box is known by its weight), and adding them up, which was done with a great deal of care, it would have made the duties last year between five and six hundred dollars more.

The CHAIRMAN.—Some five years ago, as a member of the Committee of Ways and Means, we were holding an investigation at the New York Custom House. The then Collector, Mr. Grinnell, said to us: "Gentlemen, you must remember that the entire legal ability of Great Britain and the continent is employed on the question as to how it may evade our custom laws." In view of that suggestion I put this question: Whether such a duty would not probably lead to a reduction in the weight of the boxes; whether it might not open a means of so reducing the weight of the boxes as to affect the revenue?

Mr. DODGE.—In reply to that I would simply say that the boxes are made as light as it is possible to make them now, in order to save the cost of transportation, because in the tonnage the box is included in the freight, and tin plate being so very heavy (the smallest box containing 112 pounds), the boxes must have a sufficient amount of strength or they would break to pieces while loading or unloading, and the tin would be injured.

Mr. ROBERTS.—State whether there would be any greater chance of fraud if the boxes were not included, or whether it would interfere with



the convenience of estimating the duties if the weight of the boxes were not included.

Mr. DODGE.—It would probably be better to have them without the boxes, because the actual cost is on the weight of the tin itself and not the box. But we found in adding up and going through the investigation, that if we simply took the weight of the tin itself at a cent a pound, it might fall short of the present duty, whereas, adding the box it made five or six hundred thousand dollars more.

I made one mistake this morning, Mr. Chairman, which, with your permission, I will ask the stenographer to correct. One of my friends, after I left the committee room, informed me that I had stated that our total importations for the forty years were between four and five hundred millions. I should have said between three and four hundred millions, and that the duties were fifty millions. I have not tabulated it, but we made an estimate of our regular importations and the regular duty, and I figured it up this morning as amounting to just about that.

I annex herewith copies of four invoices and memoranda, called by the Custom House officers fraudulent and duplicate invoices, marked respectively A and B, C and D, E and F, G and H.

The first is an invoice by the Calabria, dated October 23, 1871, for £4,073 3s. 6d., marked A, and the memorandum, with the copies of two bills, marked B and B<sup>1</sup>. The first of these shows that three items, designated by a \*, and included both in the invoice and memorandum, are invoiced at £47, and entered in the memoranda at £47 15s. 1d., an alleged undervaluation of 15s. 1d. The second, B<sup>1</sup>, shows that one item, §, invoiced at £20 14s. should have been entered £21 5s., an undervaluation of 11s.

The second, an invoice per City of Antwerp, dated October 9, 1871, for £5,114 19s., marked C; and memorandum, with copies of three bills, marked D and D<sup>1</sup> D<sup>2</sup>. The first of these shows that five items, \*, are included in both invoice C and memorandum D; that four of the items are entered at the same price in invoice and memoranda. The other, designated by a §, is invoiced at £96 16s., and entered in the memorandum at £102 18s., an undervaluation of £6 2s. Another memorandum, D<sup>2</sup>, shows three items marked †, included in both the invoice and memoranda, invoiced at £43 15s., entered in the memorandum at £45 11s. 10d., an undervaluation of £1 16s. 10d.

The third, an invoice per Calabria, November 27, 1871, for £4,007 10s. 6d., marked E and memorandum F; seven items, designated by a \*, are included in both the invoice and memorandum, and are entered at the same price in each. The original memorandum or duplicate invoice, equally fraudulent with the other, was examined by Mr. Jayne, and bears at the bottom the word and initials, "Correct, B. G. J.," in his handwriting.


The fourth, an invoice per Algeria, March 15, 1872, for £7,322 5s. 6d., marked G and memorandum H; the three items designated by a \*, included in both invoice and memorandum, invoiced at £271 18s., are entered in the memorandum at £270 13s. 2d., an overvaluation of £1 4s. 10d.

The four invoices contain one hundred and eighty-six items, with nineteen items common to both invoice and memoranda; nine are invoiced below memorandum price, seven at the same price in each, and three are invoiced above the memorandum price.

The total amount of the two invoices in which there are undervaluations is £9,188, or \$46,000 gold. These undervaluations amount to £9 4s. 11d., or \$46.50 gold. The duties on the amount of undervaluation were about \$9.20, and for these alleged fraudulent undervaluations of one fifth of one per cent. on the amount of the two invoices they were forfeited to the Government.

These four invoices were taken at random, without selection, and are, I believe, fair samples of the whole.

A.—Invoice of tin plates shipped on board the steamship *Calabria*, Captain McMicken, for New York, by order and on account and risk of Messrs. Phelps, Dodge & Co., New York.

		£	s.	d.	
Pontymister (P., D. & Co.)	2,496 boxes tin plate :				
	5, IC, 28s.....	7	0	0	
	70, IX, 33s.....	115	10	0	
	10, IXW, 30s.....	15	0	0	
	15, IXX, 38s.....	28	10	0	
	34, 100 sheets, DXX, 33s.....	56	2	0	
	5, 225 sheets, 16 x 16, IX, 60s.....	15	0	0	
	1, 225 sheets, 16 x 16, IXW, 55s.....	2	15	0	
	11, 225 sheets, 18 x 18, IX, 76s.....	41	16	0	
	4, 225 sheets, 18 x 18, IXW, 70s.....	14	0	0	
	25, 112 sheets, 14 x 20, IC, 28s.....	35	0	0	
	10, 14 x 20, IX, 33s.....	16	10	0	
	90, 14 x 20, IXX, 37s.....	166	10	0	
	20, 14 x 20, IXXX, 42s.....	42	0	0	
	9, 20 x 28, IC, 56s.....	25	4	0	
	75, Terne, IC, 25s.....	93	15	0	
	5, Terne, IX, 30s.....	7	10	0	
	6, Terne, 20 x 28, IC, 50s.....	15	0	0	
	20, Terne, 20 x 28, IX, 60s.....	60	0	0	
<hr/>					
415					
Pontymister (L. & Co.)....	1, D7X, 60s.....	3	0	0	
	96, D5X, 50s.....	240	0	0	
	79, D4X, 45s.....	177	15	0	
	21, IXXXX, 43s.....	45	3	0	
	<hr/>				
197					
Cookley (K  ).....	*3, 31 x 44, IXXXX, 160s.....	24	0	0*	
	*2, 38½ x 27½, IXXXX, 120s.....	12	0	0*	
	*1, 65½ x 25, IXXXX, 220s.....	11	0	0*	
	<hr/>				
6					
Radnor (P., D. & Co.)....	430, IC, 26s 6d.....	569	15	0	
	42, ICW, 24s 6d.....	51	9	0	
	177, IX, 31s 6d.....	278	15	6	
	15, IXW, 28s 6d.....	21	7	6	
	<hr/>				
664					
Sandon (P., D. & Co.)....	150, IC, 25s 6d.....	191	5	0	
	50, 12 x 12, IC, 25s 6d.....	63	15	0	
	<hr/>				
200					
E. C. C. (P., D. & Co.)....	311, Terne, 20 x 28, IC, 48s.....	746	8	0	
	91, Terne, 20 x 28, IX, 58s.....	263	18	0	
	<hr/>				
402					
Pen (P., D. & Co.).....	280, Coke, 11 x 11, IC, 21s.....	294	0	0	
	99, Coke, 14 x 20, IC (Wasters), 21s. 6d.....	106	8	6	
<hr/>					
		3,857	1	6	
Discount for cash.....		154	5	9	
<hr/>					
Charges, cartage, portorage, &c.....		3,702	15	9	
<hr/>					
		21	14	9	
Pontymister (P., D. & Co.)	215.215 boxes No. 38 B. T., 450s., 112 pounds, 22s...	236	10	0	
	§ Wilden (C. E.).....	20	14	0§	
<hr/>					
		257	4	0	
Discount for cash.....		10	5	6	
<hr/>					
		246	18	6	
Charges, cartage, portorage, &c.....		2	7	6	
<hr/>					
					249 6 0
<hr/>					
Commission, 2½ per cent.....					3,973 16 6
<hr/>					
					99 7 0
<hr/>					
					4,073 3 6

B.—Copy of John Knight & Co.'s invoice, dated October 17, 1871.

R	Cookley, K. ....	1, 44 x 31, XXXX, 50s.....	445 pounds.
		1, 44 x 31, XXXX, 50s.....	446 pounds.
		1, 45 x 31, XXXX, 53s.....	473 pounds.
		1, 38½ x 27½, XXXX, 51s.....	343 pounds.
		1, 38½ x 27½, XXXX, 52.....	352 pounds.
		1, 65½ x 25, XXXX, 59s.....	632 pounds.
		6	2,691
	= Pap'ered.		
	Six boxes, weighing 1 ton 4 hundred weight 3 pounds, at 39s. 9d.....		£47 15s. 1d.*

B¹.—Copy of E. P. & W. Baldwin's invoice. October 9, 1871.

Wilden (C. E.).....	18 boxes B. B. sheets, colored, rolled and annealed, 17 x 12 x 29, 23 cwt. 1	£ s.
	qr. 1 lb., at 17s. 6d.....	20 7
	Tin cases, 1s.....	0 18
		21 5½



Delivered in Liverpool. Discount, 3 per cent, for cash.  
Arr. per Calabria, October 23, 1871.

C.

CITY OF ANTWERP, S. S.

Invoice of goods shipped on board the steamship City of Antwerp, Captain Eynon, for New York, order and on account and risk of Messrs. Phelps, Dodge & Co., New York.

	2,436 boxes tin plates:	£ s. d.	
Pontymister, (P. D. & Co.)	48, IC, 28s.....	67 4 0	
	50, IX, 33s.....	82 10 0	
	9, IXXX, 47s.....	21 3 0	
	13, 100 sheets, DXX, 33s.....	21 9 0	
	11, 100 sheets, DXXX, 38s.....	20 18 0	
	20, 14 x 20, IX, 33s.....	33 0 0	
	6, 20 x 28, I C, 56s.....	16 16 0	
	40, 225 sheets, 13 x 13, IX, 38s.....	76 0 0	
	7, 225 sheets, 13 x 13, XW, 35s.....	12 5 0	
	17, 225 sheets, 18 x 18, IX, 76s.....	64 12 0	
	2, 225 sheets, 18 x 18, XW, 70s.....	7 0 0	
	260, Terne, IC, 25s.....	325 0 0	
	5, Terne, IX, 30s.....	7 10 0	
	488		
Do.....	S	13, 112 sheets, 13 x 13, IXXXX, 29s.....	18 17 0
		2, 112 sheets, 13 x 13, IXXXXW, 25s. 6d.....	2 11 0
		13, 112 sheets, 14 x 14, IXXXX, 34s. 3d.....	22 5 3
		3, 112 sheets, 14 x 14, IXXXXW, 30s. 3d.....	4 10 9
		11, 112 sheets, 17 x 17, IXXXX, 51s.....	28 1 0
		2, 112 sheets, 17 x 17, IXXXXW, 45s.....	4 10 0
		13, 112 sheets, 18 x 18, IXXXX, 57s.....	37 1 0
		2, 112 sheets, 18 x 18, IXXXXW, 50s. 3d.....	5 0 6
		59	
Do.....	O	44, 112 sheets, 11½ x 11½, IXXXXX, 27s. 6d. for	120 9 0
		112 sheets, 54s. 9d. for 225 sheets.....	
		3, 112 sheets, 11½ x 11½, IXXXXXW, 24s. 6d.	7 6 3
		for 112 sheets, 48s. 9d. for 225 sheets....	
		*44, 112 sheets, 13 x 13, IXXXXX, 32s.....	70 8 0*
		*2, 112 sheets, 13 x 13, IXXXXXW, 28s. 6d.....	2 17 0*
		*20, 112 sheets, 14 x 14, IXXXXX, 37s. 9d.....	37 15 0*
		\$44, 112 sheets, 16 x 16, IXXXXX, 49s.....	96 16 0\$
		*4, 112 sheets, 16 x 16, IXXXXXW, 43s. 9d....	8 15 0*
		161	
Do.....(L. & G.).....		18, 11 x 11, IXXXX, 49s.....	44 2 0
		94, DXXX, 40s.....	188 0 0
		30, DXXXX, 45s.....	67 10 0
		16, DXXXXX, 50s.....	40 0 0
158			
Carnarvon, (N. E. J.).....		53, 10 x 20, IC, 38s.....	100 14 0
		6, 10 x 20, ICW, 36s.....	10 16 0
59			


		£	s.	d.
Powys, (P, D. & Co.).....	27, 112 sheets, 20 x 28, IX, 67s.....	90	9	0
	33, 225 sheets, 18 x 18, IX, 76s.....	125	8	0
	92, 225 sheets, 13 x 13, IX, 39s.....	179	8	0
	<u>152</u>			
S. B., (P., D. & Co.).....	5, 112 sheets, 20 x 28, IX, (Wasters) 60s.....	15	0	0
	3, 225 sheets, 18 x 18, IX, (Wasters) 70s.....	10	10	0
	6, 225 sheets, 13 x 13, IX, (Wasters) 35s.....	10	10	0
	<u>14</u>			
Llaufair  .....	11, coke, 9 x 18, IC, 225 sheets, 29s. 6d.....	16	4	6
Do .....(P., D. & Co.)	17, coke, ICW, 22s. 6d.....	19	2	6
	31, coke, 14 x 20, IC, 24s. 6d.....	37	19	6
	6, coke, 14 x 20, ICW, 22s. 6d.....	6	15	0
	<u>54</u>			
Howard  .....	100, coke, 11 x 22, IC, 225 sheets, 43s. 9d.....	218	15	0
	107, coke, 9½ x 19, IC, 225 sheets, 32s. 9d.....	175	4	3
	56, coke, 10 x 20, IC, 225 sheets, 36s. 3d.....	101	10	9
	<u>263</u>			
Do....(P., D. & Co.)....	29, coke, 14 x 22, IC, 27s.....	39	3	0
	1, coke, 14 x 22, ICW, 32s.....	1	12	0
	<u>30</u>			
Bute....(P., D. & Co.)....	7, coke, 14 x 22, IC, 26s.....	9	2	0
C. F., (P., D. & Co.).....	354, coke, 11 x 11, IC, 20s. 6d.....	362	17	0
	15, coke, 14 x 20, IC, 23s. 6d.....	17	12	6
	1, coke, 14 x 20, IX, 28s. 6d.....	1	8	6
	<u>370</u>			
Cymro, (P., D. Co.).....	300, coke, 14 x 20, IC, 23s. 6d.....	352	10	0
Cum-du, (P., D. & Co.)....	40, coke, IC, 23s.....	46	0	0
	6, coke, ICW, 21s.....	6	6	0
	6, coke, 12 x 12, IC, 23s.....	6	18	0
	12, coke, 12 x 12, ICW, 21s.....	12	12	0
	136, coke, 14 x 20, IC, 23s.....	156	8	0
	<u>200</u>			
Pontymister. (P., D. & Co.)	60, No. 38, 112 pounds B. T., 450 sheets, 22s..	66	0	0
Do....(J. D. & Co.).....	†10, No. 30, 18 x 24, B. T., 17s. 6d.....	8	15	0†
	†15, No. 33, 12 x 17, B. T., 17s. 6d.....	13	2	6†
	†25, No. 33, 14 x 20, B. T., 17s. 6d.....	21	17	6†
	<u>50</u>	3,692	16	6
	Discount for cash.....	147	14	3
	Charges, cartage, portorage, etc.....	3,545	2	3
		21	13	6
				£ s. d.
660 ingots common English tin (T. B. & Co.).....				3,566 15 9
	<i>Cwt. Qrs. Lbs.</i>			
L .....	200 ingots 28 pounds each. 50 2 3			
	100 ingots 56 pounds each. 50 3 9			
	<u>300</u>			
M.....	200 ingots 28 pounds each. 50 2 5			
	100 ingots 56 pounds each. 50 2 22			
	<u>202 2 11</u> at £134	1,357	8	2
	Discount for cash.....	40	14	8
				1,316 13 0
	(F. O. B.). .....	4,990	4	0
	Commission 2½ per cent.....	121	15	0
		5,114	19	0

B. L.		
Freight on 155¼ tons, at 20s.....		£ s. d.
Per cent. primeage.....		155 15 0
		7 15 9
		163 10 9

(E. E.) LIVERPOOL, October 9, 1871.

PHELPS, JAMES & CO.


D.

	£ s. d.	
*44 boxes Pontymister, 112 sheets, 13 x 13 XXXXX tin plates, 32s.....	70 8 0*	
* 2 boxes charcoal, 112 sheet, 13 x 13 XXXXX tin plates, 28s. 6d.....	2 17 0*	
*20 boxes charcoal, 112 sheets, 14 x 14 XXXXX tin plates, 37s. 9d.....	37 15 0*	
\$42 boxes charcoal, 112 sheets, 16 x 16 XXXXX tin plates, 49s.....	102 18 0\$	
* 4 boxes charcoal, 112 sheets, 16 x 16 XXXXX tin plates, 43s. 9d.....	8 15 0*	£ s. d.
		222 13 0
112 		
Discount on £222 13s., at 3 per cent.....	6 13 6	
Discount on £222 13s., at 1 per cent.....	2 4 6	
		8 18 0
		213 15 0

Per City of Antwerp, October 9, 1871.

D.<sup>1</sup>

Corrected invoice, Messrs, PHELPS, JAMES & Co., October 4, 1871.

44 boxes Pontymister, 112 sheets, 11½ x 11½ XXXXX tin plates, 27s. 6d....	60 10 0
3 boxes charcoal, 112 sheets, 11½ x 11½ XXXXXW tin plates, 24s 6d.....	3 13 6
2 boxes charcoal, 112 sheets, 16 x 16 XXXXX tin plates, 43s.....	4 18 0
49 	69 1 6

D.<sup>2</sup>

† 10 boxes charcoal, 112 sheets, B. T. 30, 24 x 18, 14cwt. 1qr. 24lbs., 18s.....	18 6 4†	
† 15 boxes charcoal, 112 sheets, B. T. 33, 17 x 12, 9 2 16 19s. 6d.....	9 8 0†	
† 25 boxes charcoal, 112 sheets, B. T. 33, 20 x 14, 21 0 23 19s. 6d.....	20 13 6†	
.... J. D. & Co., 50 tin cases, 1s.....	2 10 0	114 13 4
50		
Discount on £114 13s. 4d., at 3 per cent.....	3 89 9	
Discount on £114 13s. 4d., at 1 per cent.....	1 2 11	4 11 8
		110 1 8

City of Antwerp, Liverpool, October 9, 1871.

E.

CALABRIA, S. S.

Invoice of tin plates shipped on board the steamship Calabria, Captain McMicken, for New York, by order and on account and risk of Messrs. Phelps, Dodge & Co., New York.

Pontymister (P., D. & Co.)	2,406 boxes tin plates :	£ s. d.
	25, 14 x 20, IC, 28s.....	35 0 0
	5, 14 x 20, IX, 33s.....	8 5 0
	74, 14 x 20, IXX, 37s.....	136 18 0
	5, 20 x 28, IX, 66s.....	16 10 0
	17, 12 x 12, IXX, 38s.....	32 6 0
	2, 12 x 12, IXXW, 35s.....	3 10 0
	30, 100 sheets, LXX, 33s.....	49 10 0
	5, 200 sheets, SXXX, 55s.....	13 15 0
	54, 19 x 19, IXX, 50s.....	135 0 0
	11, 19 x 19, IXXW, 46s.....	25 6 0
	210, Terne, IC, 26s.....	273 0 0
	438	



Pontymister (R. S. & Co.)	* 4, 112 sheets 14 x 14, IXXXXXX, 41s. 6d....	£ s. d.	
	*10, 112 sheets 16 x 16, IXXXXXX, 53s. 6d....	8 6 0*	
	* 1, 112 sheets 16 x 16, IXXXXXXW, 48s. 3d....	26 15 0*	
	* 7, 112 sheets 18 x 18, IXXXXXX, 69s.....	2 8 3*	
	* 1, 112 sheets 18 x 18, IXXXXXXW, 62s. 3d....	24 3 0*	
	* 9, 112 sheets 21 x 15, IXXXX, 55s.....	3 2 3*	
	* 1, 112 sheets 21 x 15, IXXXXW, 48s. 6d.....	24 15 0*	
		2 8 6*	
	<u>33</u>		
Do....(L. & G.).....	58, DXXXX, 50s.....	145 0 0	
	37, DXXXX, 45s.....	83 5 0	
	55, DXXXX, 40s.....	110 0 0	
	18, IXXXX, 60s.....	54 0 0	
	<u>168</u>		
M. F. (P., D. & Co.).....	800, Terne, 1C, 27s.....	1,080 0 0	
	<u>59, IC, 26s.....</u>	65 0 0	
Sandon (P., D. & Co.).....	100, 14 x 20, IC, 26s.....	130 0 0	
	25, 12 x 12, IX, 31s.....	38 15 0	
	<u>175</u>		
B. C. N. (P., D. & Co.)....	100, coke, IC, 26s.....	130 0 0	
Teuby.....	280 coke, 10 x 20, IC, 35s.....	490 0 0	
	22 coke, 10 x 20, CW, 32s.....	35 4 0	
	<u>302</u>		
Harold (P., D. & Co.).....	270, coke, 10 x 20, IC, 35s.....	472 10 0	
Taff.....	120, coke, 10 x 20, IC, 33s.....	198 0 0	
		<u>3,852 12 0</u>	
	Discount for cash.....	154 2 0	£ s. d.
			3,698 10 0
	Charges, cartage, portorage, etc.....		23 14 6
S.....	23 casks old scrap lead (Sparrow)		
	Cwt. Qrs. Lbs.		
	230 0 3 gross.		
	11 2 27 tare.		
	<u>218 1 4 net at £17 12 6..</u>	192 7 3	
	Discount.....	4 16 3	
			187 11 0
	(F. O. B.).....		3,909 15 6
	Commission, 2½ per cent.....		97 15 0
			<u>4,007 10 6</u>

(E. E.) LIVERPOOL, November 27, 1871.

PHELPS, JAMES & CO.

B. L.		£ s. d.
Freight on 158 tons at 20s.....		158 0 0
Primage.....		7 18 0
		<u>165 18 0</u>

F.

Messrs. PHELPS, JAMES & Co., Liverpool, November 22, 1871.

		£ s. d.
* 4 boxes Pontymister, 112 sheets, 14 x 16 XXXXXX tin plates, 41s. 6d.....		8 6 0*
*10 boxes Pontymister, 112 sheets, 16 x 16 XXXXXX tin plates, 53s. 6d.....		26 15 0*
* 1 box Pontymister, 112 sheets, 16 x 16 XXXXXXW tin plates, 48s. 3d.....		2 8 3*
* 7 boxes Pontymister, 112 sheets, 18 x 18 XXXXXX tin plates, 69s.....		24 3 0*
* 1 box Pontymister, 112 sheets, 18 x 18 XXXXXXW tin plates, 62s. 3d.....		3 2 3*
* 9 boxes Pontymister, 112 sheets, 21 x 15 XXXX tin plates, 55s.....		24 15 0*
* 1 box Pontymister, 112 sheets, 21 x 15 XXXXW tin plates, 48s. 6d.....		2 8 6*
		£ s. d.
33 R. S. & Co.'s		91 18 2
October 28. Discount on £91 18s., at 3 per cent.....	2 15 2	
Discount on £91 18s., at 1 per cent.....	18 4	
		<u>3 13 6</u>

Per Calabria, November 25. Correct, P. G. J.

88 4 6

*Invoice of goods shipped on board the steamship Algeria, Capt. Le Messurier, for New York, by order and on account and risk of Messrs. Phelps, Dodge & Co., New York.*

		£	s.	d.
Dean (P., D. & Co.).....	4,220 boxes tin plates :			
	330, 1C, 33s.....	544	10	0
	46, 1CW, 31s.....	71	6	0
	88, 1X, 39s.....	171	12	0
	17, 1XW, 36s.....	30	12	0
	65, 14 x 20, 1C, 33s.....	107	5	0
	81, 14 x 20, 1X, 38s.....	153	18	0
	112, 12 x 12, 1X, 38s.....	212	0	0
	9, 12 x 12, 1XW, 35s.....	15	15	0
	<u>748</u>			
Powys (P., D. & Co.).....	20, 1C, 33s.....	33	0	0
	12, 1X, 38s.....	22	16	0
	11, 12 x 12, 1X, 38s.....	20	18	0
	10, 11 x 11, 1C, 29s.....	14	10	0
	53, 11 x 11, 1X, 34s.....	90	2	0
	2, 13 x 13, 1X, 42s.....	4	4	0
	<u>108</u>			
S. B. (P., D. & Co.).....	3, 12 x 12, 1X, 35s.....	5	5	0
	3, 11 x 11, 1C, 27s.....	4	1	0
	8, 11 x 11, 1X, 32s.....	12	16	0
	2, 13 x 13, 1X, 39s.....	3	18	0
P. M.....	<u>16</u>			
	468, 1CW, 31s.....	725	8	0
	94, 1XW, 36s.....	169	4	0
	40, 14 x 20, 1XW, 36s.....	72	0	0
Bradley (B. & Co.).....	<u>602</u>			
	*21, D8X, 180s.....	189	0	0*
	* 9, D6X, 154s.....	69	6	0*
	* 4, D3X, 68s.....	13	120*	
Sandon (P., D. & Co.).....	<u>34</u>			
	300, 1C, 31s.....	465	0	0
	15, 1CW, 29s.....	21	15	0
	150, 1X, 36s.....	270	0	0
	15, 1XW, 33s.....	24	15	0
	200, 14 x 20, 1X, 36s.....	360	0	0
	5, 14 x 20, 1XW, 33s.....	8	5	0
B. C. N. (P., D. & Co.)....	<u>685</u>			
	50, coke, 12 x 12, 1C, 30s.....	75	0	0
	5, coke, 12 x 12, 1CW, 28s.....	7	0	0
Bangor (P., D. & Co.).....	<u>55</u>			
	86, coke, 1C, 29s, 6d.....	126	17	0
	30, coke, 10 x 20, 1C, 42s, 6d.....	63	15	0
T. D. (coke).....	<u>116</u>			
	6, coke, 1X, 33s.....	9	18	0
	2, coke, 1XX, 38s.....	3	16	0
	3, coke, 1XXX, 43s.....	6	9	0
	3, coke, 13 x 13, 1C, 31s.....	4	13	0
	4, coke, DXXX, 40s.....	8	0	0
A. C. (P., D. & Co.).....	<u>18</u>			
	200, coke, 10 x 20, 1C, 43s.....	430	0	0
	20, coke, 10 x 20, 1C, 40s.....	40	0	0
L. F. (P., D. & Co.).....	<u>220</u>			
	35, coke, 10 x 20, 1C, 41s.....	71	15	0

B. V. (P., D. & Co.).....	35, coke, IC, 29s. 6d.....	£ s. d. 51 12 6
	376, coke, 14 x 20, IC, 29s. 6d.....	554 12 0
	72, coke, 14 x 20, CW, 27s. 6d.....	99 0 0
	<u>483</u>	
C. F. (P., D. & Co.).....	300, coke, 14 x 20, IC, 29s. 6d.....	442 10 0
	36, coke, 14 x 20, CW, 27s. 6d.....	49 10 0
	<u>336</u>	
Glantawe (P., D. & Co.)...	130, coke, IC, 29s. 6d.....	191 15 0
	220, coke, 14 x 20, IC, 29s. 6d.....	324 10 0
	<u>350</u>	
Cynon (P., D. & Co.).....	35, coke, IC, 29s.....	50 15 0
	224, coke, 14 x 20, IC, 29s.....	324 10 0
	16, coke, 14 x 20, CW, 27s.....	21 12 0
	<u>275</u>	
Penlan (P., D. & Co.).....	139, coke, 14 x 20, IC, 29s. 6d.....	205 0 6
		<u>7,070 5 0</u>
	Discount for cash.....	282 16 0
	Charges, cartage, portorage, etc.....	<u>6,787 9 0</u>
		36 17 9
W. (P., D. & Co.).....	13 bundles sheet iron, 84 x 24 x 16.	£ s. d. 6,824 6 6
	13 bundles sheet iron, 84 x 26 x 16.	
	12 bundles sheet iron, 84 x 28 x 16.	
	12 bundles sheet iron, 84 x 30 x 16.	
	12 bundles sheet iron, 84 x 24 x 17.	
	12 bundles sheet iron, 84 x 25 x 17.	
	13 bundles sheet iron, 84 x 28 x 17.	
	13 bundles sheet iron, 84 x 30 x 17.	
	17 bundles sheet iron, 84 x 24 x 18.	
	17 bundles sheet iron, 84 x 26 x 18.	
	17 bundles sheet iron, 84 x 28 x 18.	
	17 bundles sheet iron, 84 x 30 x 18.	
	25 bundles sheet iron, 84 x 24 x 19.	
	25 bundles sheet iron, 84 x 26 x 19.	
	25 bundles sheet iron, 84 x 28 x 19.	
	25 bundles sheet iron, 84 x 30 x 19.	
	25 bundles sheet iron, 84 x 24 x 20.	
	25 bundles sheet iron, 84 x 26 x 20.	
	25 bundles sheet iron, 84 x 28 x 20.	
	25 bundles sheet iron, 84 x 30 x 20.	
W. (P., D. & Co.).....	<u>368</u> Tons, cwt. lbs.	
	20 6 12 at £8 15.....	177 13 6
	33 bundles, 84 x 24, No. 22.	
	50 bundles, 84 x 24, No. 23.	
	200 bundles, 84 x 24, No. 24.	
	Weighing 14 tons, 7 cwt., 1 qr., 13 lbs., at £10 5s.	147 5 6
		<u>324 19 0</u>
	Discount.....	8 2 6
		<u>316 16 6</u>
	Charges, cartage, etc.....	2 10 9
		<u>319 7 3</u>
	Commission 2½ per cent.....	7,143 13 9
		178 11 9
		<u>7,322 5 6</u>

(E. E.) LIVERPOOL, March 15, 1872.

PHELPS, JAMES & CO.

B. L.	£ s. d.
Freight on 260¼ tons, at 20s.....	260 15 0
Primage.....	26 1 0
	<u>286 16 6</u>

## H.

## ALGERIA S. S.

Bradley, B. &amp; Co., 34 cases tin plates:

		Cwts.	qrs.	lbs.	Sheets.
*21,	41 $\frac{1}{2}$ x 19 x 18, G.....	107	1	11.....	1070*
*9,	41 $\frac{1}{2}$ x 19 x 20, G.....	39	2	5.....	530*
*4,	25 $\frac{1}{2}$ x 9 x 23, G.....	7	3	2.....	501*

34

154 2 18, at 35s., delivered in Liverpool... £ s. d.  
270 13 2

DECEMBER 28.

We invoiced 21 boxes, at 180s.....	£ s. d.
9 boxes, at 154s.....	180 0 0
4 boxes, at 68s.....	69 6 0
	13 12 0

271 18 0

Tabular statement derived from the foregoing invoices and memoranda.

INVOICES.	Total amount.	Invoice price of items in invoice and memoranda.	Memoranda price of items in invoice and memoranda.	Under valuation.	Total duties paid.	Amount of duties on under valuation.
A.....	\$20,365 00	\$235 00	\$238 75	\$6 50	\$4,073 00	\$1 30
C.....	25,570 00	1,301 25	1,341 00	39 75	4,114 00	7 94
E.....	20,035 00	458 50	458 50	.....	4,007 00	.....
G.....	36,611 00	1,359 50	1,353 25	.....	7,322 00	.....
Total.....	\$102,581 00	\$3,354 25	\$3,391 50	\$46 25	\$19,516 00	9 24

## CROSS-EXAMINATION AND REHEARING BEFORE THE COMMITTEE OF B. G. JAYNE.

The hearing of the representatives of the several Boards of Trade and Chambers of Commerce, and also of individual merchants before the Committee, having been concluded on the 10th of March, B. G. Jayne was recalled and resumed his statement. From the official report of this statement and the accompanying examination of Jayne by the Committee, are derived the following extracts relative to the case of Phelps, Dodge & Co. :

Mr. ROBERTS.—Have you taken, in any case, any books or papers other than those bearing directly upon the charges made, and of which notice had been given?

Mr. JAYNE.—It has been the intention, sir, in every case to confine ourselves strictly to books of that kind. We have been very careful in every case to take none but the commercial books of the house. It is very difficult to tell whether a book relates to a particular importation.

Mr. ROBERTS.—So that, in fact, then, you have taken other books than those bearing on the case?

Mr. JAYNE.—We have found that some books that we have taken did not have the entries in pertaining to the importations. That is true. It has not been the intention, however.

Mr. ROBERTS.—What use have you ever made of any books or papers, including entries, other than those bearing on the particular case?

Mr. JAYNE.—Where I have found entries upon the same pages of the books, and part of the same general transaction, we have frequently included them for recovery. We have used nothing except it came from the book which had the account of the importations in it to which the warrant referred.

Mr. ROBERTS.—Do you say, then, you have not made any use of any other papers?

Mr. JAYNE.—I think not, sir.

Mr. ROBERTS.—Have you in any case forced a settlement, or attempted to do so, by any other inference than the recital of the penalties of the law?

Mr. JAYNE.—No, sir; never.

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NOTE.—As pertinent to this latter testimony of Jayne, and as illustrative of the character of the individual to whom the administration of Custom House law, in an important department in this great City of New York was for some years entrusted, attention is here asked to a portion of the speech

before the Committee of Ways and Means, during the hearing in question, by Charles Brainerd, Esq., of New York.

After detailing the working of the customs laws in respect to certain cases, in which, as counsel, he had defended and justified certain importing houses in New York City, and in which the agency of arbitrary treatment and "terrorism" had been very systematically resorted to, Mr. Brainerd continued :

"I think I have now exhibited the system precisely as it is. James Otis described the practice with surprising accuracy. Let me read his description :

"Custom House officials may enter our houses when they please; we are commanded to permit their entry. Their menial servants may enter; may break locks, bars and everything in their way; and whether they break through malice or revenge, no man, no court can inquire. Bare suspicion without oath is sufficient."

"The description fails in but one thing. Then bare suspicion without the oath that you are suspicious is sufficient. Now bare suspicion with the oath that you are suspicious is quite enough.

"Mr. Jayne, the special agent, was examined before the Senate Committee of 1872 in the City of New York. I ask this Committee, whose members have exhibited such an interest in this matter, to read what he says about threats, to remember where he makes them, and in what connection; to read again carefully the familiar testimony that he gave in the presence of gentlemen who were then protecting the system."

From this sworn evidence let a portrait of a special agent be drawn.

*First.* Let us take the famous handcuff story, as cautiously related by the shrewd agent; and I beg the Committee attentively to note the character of the answers made by the special agent. They are curious and important, as showing by their omissions and equivocations, and their play upon words, the real secrets of this business, and the sinister modes by which it is actually carried on :

*New York Custom House Investigation—Senate Doc. 227, 42d Congress, 2d Session, Vol. II, p. 524-5.*

"Q. MR. BAYARD.—Then the use of handcuffs, or the threat of handcuffs, is that considered by you a legitimate method of obtaining information upon which to base the seizure of merchants' books and papers?—A. It might be legitimate, to make men tell the truth, to lay them down to remind them that they might be used.

"Q. Are you willing to state to the Committee further the extent to which you have acted upon the fears of men in compelling them to give you information to use in order to prosecute your suits?—A. Those have been done, sir, to a very limited extent. A man who has been guilty of doing wrong generally fears.



"Q. Now, tell us the man who you were interrogating and seeking to terrify, at the time you had this unexpected aid from the authority of the marshal, with the pair of handcuffs.—A. I think there was no one at that time in my office. I don't think they were left there for that purpose at all.

"Q. Did you not state that you had a man under examination, and that some one came in and put down a pair of handcuffs beside him without saying anything, or without your ordering it?—A. I didn't say that. I said such a case might have occurred.

"Q. What made you say that? Did such a case occur?—A. I presume such a case might.

"Q. What idea had he; that you were interrogating this timid witness?—I think he brought him to me.

"Q. Was he there during all that time?—A. I think he was outside most of the time.

"Q. At what stage of the terrification did he come in with the handcuffs?—A. I couldn't say. I think he came in during the time that I was examining the witness. I don't know at what stage; I could not say.

"Q. How often did you actually put those handcuffs on anybody, or any number of men?—A. I never put them on any man in my life.

"Q. Who put them on in your presence?—A. I don't think any man ever put them on in my presence.

"Q. That you swear to?—A. I swear that I have no knowledge of their ever having been put on a man to terrify him.

"Q. Did you put them on to encourage him, if not to terrify him?—A. I think not for any such purpose. I think I have unlocked the handcuff and put it on my wrist to see how it worked, but not to terrify him.

"Q. If you didn't put them on to terrify him or encourage him, what did you put them on him for?—A. I couldn't put them on.

"Q. What did you put them on your own wrist for?—A. To see how the handcuff worked. To see how it opened and how it locked.

"Q. And you here swear that no man, to your knowledge, was ever handcuffed in your office?—A. According to the best of my knowledge and belief there has not been, to my recollection. I don't recollect any such case.

"Q. Do you know the name of the individual who had this little suggestion made to him by the laying of a pair of handcuffs down by Chalker, when you were examining him?—A. I don't, sir.

"Q. Who was the next case when the same suggestion was made?—A. Well, sir, I couldn't tell you.

"Q. When was the third case?—A. I couldn't tell you, sir. I never kept any book account or record of them.

"Q. You didn't make a record of this transaction?—A. No, sir; I don't think it has occurred very often."

*Second.* Following his use of handcuffs for purposes of moral suasion, let us take a specimen of his ethical arguments. (*Id.* p. 532):

"Q. You say you have threatened these men with punishment if they did not give you information?—A. I may have done so; I presume I have.

"Q. Do you not know it, sir? The question of the presumption of the thing within your own knowledge is not exactly the way to state.—A. I have used every appliance I have deemed legitimate to extract the truth from men that I had a moral certainty in my own mind had been committing a fraud on the Government.

"Q. Now, give us a little history of what you deem legitimate methods of extracting the truth.—A. By sitting down first and reasoning with the man, and telling him what his better course would be—telling him what a wicked fellow he had been, how he had violated every principle of manhood, morality and official honor, had been defrauding the Government, a party to a fraud, and that his best and only way was to tell frankly just what he had done. Sometimes, when that failed, I held up to him the terrors of the law, read once in awhile a section of the law to him, and of course it might be deemed a threat or otherwise.

"Q. Have you exhausted your catalogue?—A. I don't care to go into that field.

"Q. But I want to know something of that field.—A. Well, I think, unless my acts are under some imputation of wrong, it is not necessary for me to take each case in detail.

"Q. I have not asked you for that; you spoke of your methods of obtaining information, and I wanted to know what they were, and if you now stated them all.—A. No, sir; I haven't stated all; each case is different; it depends upon the man who sits before you. Sometimes he is a man who has no physical fear; again, he is a man who has no moral fear, that has no moral sense of wrong; it depends upon the subject you have to deal with.

"Q. Then you would act upon either as the case would be?—A. I would use any method that I would deem legitimate to get at the truth, to get bad men out of service, to detect any fraud upon the revenue and stop it.

"Q. Am I to understand you that you would terrify a man who was physically a timid man?—A. I might.

"Q. Did you?—A. I presume I have.

"Q. Do you know you have?—A. I presume there are men in New York who think I am a terrible fellow.

"Q. I ask you if you have terrified men in order to obtain testimony from them?—A. Quite likely. I wasn't the keeper of their feelings and couldn't know all their emotions.

"Q. Have your arguments been altogether of a moral or mental nature?—A. I find, in nine cases out of ten, when you show a man the exact position he stands in, that you can, by treating a man properly, appeal to their consciences and show to them that they have done a great wrong."

**Note this question and the remarkable answer:**

"Question. Now, give us a little history of what you deem legitimate methods of extracting the truth.

"Answer. By sitting down first and reasoning with the man and telling him what his better course would be; telling him what a wicked fellow he has been, how he has been violating every principle of manhood, morality and official honor, has been defrauding the Government, a party to a fraud, and that his best and only way was to tell frankly just what he had done. Sometimes, when that failed, I held up to him the terrors of the law (this means handcuffs and Sing Sing); read once in awhile a section of the law to him; and, of course, it might be deemed a threat or otherwise."

**Mr. BRAINERD.**—The courtly senator, Mr. Bayard, said at this point, "Have you exhausted your catalogue?" and the superexcellent special agent replied—what? "I don't care to go into that field." The house that paid \$271,000 knew what it was to go into that field. The men who saw Mr. Jayne, who heard him talking about Sing Sing and Clinton, and saw him shutting and opening the handcuffs upon his own wrists, did not care to go into

that field either, but they were compelled to do so, and came down. Of course they came down. Does he say, "Conscience doth make cowards of us all?" Shakspeare lived, and the special agent's reading occurred at a period far anterior to the adoption of the seizure law of 1863. Conscience might have made cowards of merchants then, but *capital*—confronted by a special agent, who can publish to the world, after he has grabbed your books, that you are liable in \$1,700,000—"capital now makes cowards of us all." So they say to their attorneys, even if he is not in league with the special agent, "Find out how much you can hush this up for, because we shall be ruined wherever we are known." And to this day merchants to whom I have referred have not fully recovered the ground lost by the grab of their papers which was made in 1869.

The following further extract from Jayne's examination by Senator Bayard, in 1872 (*Id.*, p. 517), shows the reason for seizing the whole mass of books and papers in a counting room :

"Q. You may give any statements about this case you please, but I prefer you to answer my question in regard to the whole of your matters—whether or not you had used testimony unknown to you when you first seized the books and papers, and which was not included—touched matters not embraced in your charge to compel settlements of those parties?—A. Do you mean other charges with regard to other goods where the same kind of frauds had taken place?

"Q. Whether you ever made your investigation or the discovery of one fraud the basis of compelling settlements of others which you did not know of at the time you were searching out the first?—A. I will say to the Senator, very frankly, that when I take the books and papers called for by the warrants, and when I find—if I find any kind of fraud against the revenue—I should take advantage of that fact; or, in other words, if I was fishing for bull-heads and caught a trout, I wouldn't throw him back into the creek.

"Q. You have, I think, put a very proper simile in reference to your business, that you regard it as fishing when you go into a merchant's books and papers?—A. Not at all, sir; I never go on fishing excursions.

"Q. Nevertheless you do fish, and catch other things than you went for?—A. If I had evidence that a fraud upon two importations of a particular kind has been committed, and in getting possession of a man's books and papers I find that those books disclose that he has committed the same kind of frauds upon other importations, I certainly include them.

"Q. You say, then, that you never abandoned the first charge that you seized the books on, and took a new one, which you discovered in the books on one of those fishing excursions, as you have described it?—A. I have included in the statement made to the collector and to the district attorney cases that were not mentioned in the warrants. I have done it frequently, I presume; how frequently I don't know."

Mr. BRAINERD.—In other words, the proceeding is inquisitorial and secret. The plan is to make a *prima facie* case, on information and belief, to obtain the warrant; the marshal under it takes all he can lay his official hands on, and then the special agent goes through the case. He may, to apply his

chaste language, have started out under the pretence of fishing for "bull-heads," but he is really fraudulently employing this extraordinary process to catch "trout."

Note the special agent's mode of obtaining testimony (*Id.*, 529, 529):

"Q. Have you paid merchants' clerks or the book-keepers of merchants in order to obtain information of their employer's business?—A. I have paid money for information wherever I deemed it legitimate.

"Q. Will you answer the question?—A. I have paid money to merchants for information that they have given me with regard to other merchants. I have paid money to men employed for the truth.

"Q. Will you answer my question, Mr. Jayne?—A. I have.

"Q. I beg your pardon, but you have not answered it as it was asked.—A. I have paid money to merchants; never to any merchant for information he had in his own books, but with regard to others.

"Q. I ask you the plain question, and I think the effect upon you will be for you to consider in this published testimony. I ask you if you have paid for information to the clerks or book-keepers of merchants for information touching the affairs of their employers?—A. Well, I have paid money wherever I thought I could get at the truth.

"Q. I want you to answer me that question. [To the Chairman.] Mr. Chairman, I must say that I have been compelled by this witness to repeat questions of a very plain character, which no man should be deceived about, in which a witness so astute as Mr. Jayne has no difficulty whatever in answering; and he has, as you see, avoided me in every way. I think the witness should be instructed by the Committee that our time is not to be taken up in this way.

"The CHAIRMAN.—The witness will please answer the question.

"WITNESS.—Mr. Chairman, allow me. There are instances in which the employés of certain importers, or former employés, have given me facts; in all such cases it was under the solemn assurance that their names should never be revealed, and I don't propose to answer any question that will discover the name of any man who has given me information that I have promised not to disclose. I should consider myself very dishonorable to give a man away in that manner.

"The CHAIRMAN.—The question was not in regard to the name.

"Mr. BAYARD.—There has been no such suggestion made, Mr. Chairman, and therefore the pretext of the witness will scarcely be deemed as honorable as he would desire. [To the witness.] There has been no suggestion to ask you the name of any one. It will be quite time enough for you to raise the objection when the question is asked. Whenever you are ready to answer my question you may.—A. Repeat the question.

"Q. I ask you whether you have paid clerks and book-keepers of merchants for information touching the business of their employers, and the private business of their employers?—A. I have paid them with regard to the business of their employers in regard to importations; that is not private business.

"Q. Then you have paid them in regard to business transactions of merchants who employed them?—A. Exactly.

"Q. That's been one of your methods of obtaining testimony?—A. It's been testimony that I have never used in court or elsewhere.

"Q. How, sir?—A. In court or elsewhere, except as it pointed the direction in which I could find certain facts.

"Q. In other words, because you had promised not to give up the names of the witnesses—of the informers—you were therefore not able to disclose it, and bring him in court, but you used the information you obtained from him to guide you to obtain other information that you could bring in court?—A. Exactly.

"Q. That's the method?—A. That's it, exactly.

"Q. And, therefore, you did use their testimony to convict their employer?—A. I used their testimony to point the direction of fraud.

"Q. It was quite as essential to get that as to get what followed?—A. And I deemed it entirely legitimate.

"Q. That has been part of your system here in New York?—A. My system has been to discover the frauds on the revenue in any way whatever that I could legitimately.

"Q. Among those methods has been that purchasing of testimony from clerks, book-keepers, of all that went on in their employer's establishment?—A. I never have except when they came to me voluntarily.

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"Q. You have undertaken to give us a statement of what you have received so far since June, 1869, as your share of the informer's receipts, being about \$125,000?—A. Yes, sir.

"Q. And you have been compelled to pay others portions of that?—A. I have paid others; yes, sir.

"Q. Are those people connected with the Custom House?—A. Yes, sir; some of them are."

Here are three pleasing proofs of the purity of this system :

- (1.) The confessed bribery of merchants' clerks.
- (2.) The confessed bribery of one merchant against another.
- (3.) The confessed sharing of the informer's portion of the moiety with officers of the customs, who were not legally entitled to anything.

Mr. BRAINERD.—I thought the language of Mr. Curran, in one of his famous orations, was florid and overdrawn when he spoke of the informer, and the witness who is one of his products, as "the wretch that is buried a man, but who lies till his heart has time to fester and dissolve, and is then dug up a witness," but I now know that this description is not overdrawn; and correspondingly strong language can justly be applied to the official who resorts to practices described in the extracts I have quoted, for the purpose of instituting and maintaining the inquisitions to which we are now objecting.

It seemed to me (and I now refer to "the pivotal case"), when men whose names have been the synonym of everything that is noble and great in mercantile life, were grabbed by the throat on the allegation that they had defrauded the Government out of \$1,600 of duties, and were held liable for \$1,700,000 forfeitures, that it was a hard case, but the judgment of the special agent is otherwise.



RESUMPTION OF B. G. JAYNE'S EXAMINATION, MARCH 10TH,  
1874.

Mr. ROBERTS.—Your interest to the extent of the share of the moiety is involved in the decision of the Secretary, and sometimes that is very large. Have you done anything in any way to induce the Secretary to decide one way or the other?

Mr. JAYNE.—I have not, except in cases where I have recommended that the sum offered be accepted.

MR. JAYNE EMPLOYS GEN. BUTLER.

Mr. ROBERTS.—Have you in such cases done anything except submit your recommendation for settlement?

Mr. JAYNE.—No, sir.

Mr. ROBERTS.—You have not sent counsel, or done anything of that sort?

Mr. JAYNE.—Well, sir, in one case I did employ counsel. I employed counsel on account of the element which entered into the case, as I told you. I went directly to the Secretary of the Treasury with those facts, and I employed counsel. The men who had entered into that scheme, which I thought was entirely dishonorable, were men of such character that I thought it was proper for me to employ counsel, and I did so.

Mr. ROBERTS.—You say "that scheme;" what do you mean by that?

Mr. JAYNE.—A man had come to my office and given information against a house. It appears that there had been a burglary in that house some time previous to that, and this man who came to my office to give information against the house employed as counsel for himself the same man who had defended the parties who had committed the burglary. During the pendency of that case, and after an offer of settlement had been made, that attorney came to my room, at the Astor House, one morning early, and called me up. He stated to me that he or his clients were in possession of certain personal letters, which had been written by a member of the firm, and some which had been received by a member of the firm, that had nothing whatever to do with their violations of the revenue law. I listened to him until he had told his story through, and said to him, "This has nothing to do with the case of the United States against them for violation of the revenue law; and now, sir, you have placed me in the position that no further negotiations can go on in this case, by or through me, until this entire element is eliminated from this case; and I shall immediately send for the attorney and counsel for this firm, and shall notify them that you have come to me with this proposition, and that you have



told me that you have threatened a member of that firm, and I will join them in a prosecution against you for attempting to black mail this firm, unless you deliver those letters up between now and six o'clock this evening." Before the appointed time the letters were brought to me, and a member of that firm came to my room, and, in presence of counsel and attorney of the firm, I handed them over to him.\* I refused to be the medium of any further negotiations in that case, with regard to terms, than those that had already been offered previous to my knowledge of this transaction. In that case I did employ counsel, because the parties asked that the case might be settled on the terms which had been offered previously to this, and I did deem that, if they wanted to settle it, it was a proper case to be settled for that amount—that is, if they so desired. I employed counsel for my own protection in that matter. I wished the judgment of some other man with regard to my own course. I obtained it, and I paid him from my own pocket.

MR. FOSTER.—I did not exactly understand the answer to Mr. Roberts' question. You employed counsel for what?

MR. JAYNE.—I deemed that it was a case where some ugly points might arise, and where this matter might come up; that it probably would come up in the course of some discussion growing out of this case. I did consent and urge settlement of this case for a sum of money, that the counsel for the informer was not willing should be accepted. I deemed that some ugly proceedings might, perhaps, grow out of this attempt to black mail.

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\* In an article which appeared in the New York *Graphic* of May 11th, 1874, and which bears upon its face evidence of having been written by Jayne, the following more circumstantial account of the proceedings in reference to the private letters alluded is given:

"On the morning of December 31 Mr. Jayne was called up at his room at the Astor House by Dudley Field, one of the counsel of Herve, who stated to him that certain private letters written and received by a member of the firm were within his control, and that he had seen that member of the firm, and stated to him that he had control of these letters, and that the firm must make an increased offer and pay a largely increased sum (so as to produce a larger moiety to his client, the informer, Herve), or he should make them public. He also stated to Mr. Jayne that he had seen Judge Fullerton and made the same statement to him, and that Judge Fullerton had sent him to Mr. Knox. Mr. Jayne immediately informed Mr. Field that his statement made it impossible for the Government officers to exact any further sum under any circumstances, and that it would be necessary for the letters to be given up to their rightful owner before any further action could be taken. Mr. Field agreed thereupon to have the letters sent to Mr. Jayne that day before one o'clock. On going to his office that morning Mr. Jayne stated to the attorney and counsel of Phelps, Dodge & Co. what had transpired, and that he could take no further action, and should in no case proceed until these letters were delivered. The attorney and counsel of Phelps, Dodge & Co. left, to return when notified of the possession of the letters. These came to Mr. Jayne in a package about noon of the same day, when he notified the attorney and counsel of Phelps, Dodge & Co. of his possession of the letters, and it was then agreed that Mr. Wakeman should notify the member of the firm to whom the letters belonged, and that he (Wakeman) should call with him at the room of Mr. Jayne and receive them at six o'clock that evening. This was carried out, the letters being shown to no person except the attorney of the firm, and only to him for the purpose of identification, and to be certain of their possession."

I thought the truth might come out and I might need counsel. I came with the facts of the case to the Secretary of the Treasury, and to counsel whom I employed.

Mr. FOSTER.—Then I am to understand that you employed counsel to prevent a larger sum being paid by Phelps, Dodge & Co.?

Mr. JAYNE.—I employed counsel to secure the settlement upon the terms that they offered, and seemed anxious to close upon.

Mr. FOSTER.—And not to have them pay a larger sum?

Mr. JAYNE.—Not to have them pay a larger sum.

Mr. FOSTER.—I think it would be well for you to give the name of the counsel, for we have understood that he was employed for a different purpose.

Mr. JAYNE.—General Butler was the gentleman, sir. He was not employed for a different purpose.

Mr. FOSTER.—Has he been employed in any other cases with you?

Mr. JAYNE.—Whenever I had questions of law that I did not understand—and in the course of my experience I have had a great many questions of law and of evidence arising—I have submitted a number of questions to General Butler, and I have paid him, I think, \$1,500 besides what I paid in that case.

Mr. FOSTER.—How many cases has he been employed in?

Mr. JAYNE.—I could not tell the exact number that I have asked him questions with regard to. I should think two or three, or three or four perhaps.

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Mr. FOSTER.—Now, about this Woodruff & Robinson case. I want your judgment as to the propriety of their paying \$50,000. Do you think they ought to have paid it for a mere irregularity? You stated there was no intentional wrong.

Mr. JAYNE.—No, I do not state that.

Mr. FOSTER.—I understood you to state it.

Mr. JAYNE.—No, sir; I have not made such a statement.

Mr. FOSTER.—Do you think there was an intentional wrong?

Mr. JAYNE.—Well, sir; I should judge that there was not.

Mr. BECK.—In connection with that case, what became of the penalty? Who got it?

Mr. JAYNE.—There is no one who has got it yet, that I know of.

Mr. BECK.—Fifty thousand dollars was paid?

Mr. JAYNE.—Yes, sir.

Mr. BECK.—Has neither the surveyor, naval officer, nor anybody else got any part of it?

Mr. JAYNE.—I guess not.

Mr. BECK.—Why ?

Mr. JAYNE.—I suppose it has not been distributed yet.

Mr. BECK.—How is it to be distributed ?

Mr. JAYNE.—I do not know.

Mr. BECK.—The Government gets half of that \$50,000 ?

Mr. JAYNE.—Yes, sir.

Mr. BECK.—And then don't you get half of the other half ?

Mr. JAYNE.—No, sir.

Mr. BECK.—Who, then, does ? I understand the surveyor, naval officer and collector gets one half of the other half among them ?

Mr. JAYNE.—Yes, sir—they get one quarter.

Mr. BECK.—The Government gets one half, and half of the other half is distributed to those three men ; who gets the other quarter ?

Mr. JAYNE.—The other goes to the man who gives the information.

Mr. BECK.—Is that you ?

Mr. JAYNE.—No, sir.

Mr. BECK.—Who is it ?

Mr. JAYNE.—A man formerly in the employ of Woodruff & Robinson.

Mr. BECK.—And you divide with him ? What part of it comes to you, and what to him ?

Mr. JAYNE.—Well, sir, in matters of that kind, whatever they offer to pay me.

Mr. BECK.—The Secretary pays you ?

Mr. JAYNE.—The Secretary awards, where there is but one claim put in, to the man who makes the claim.

Mr. BECK.—And the claim is put in by you ?

Mr. JAYNE.—Yes, sir ; with power of attorney from this man.

Mr. BECK.—Then what part of it belongs to you, and what are you going to pay to him ?

Mr. JAYNE.—Just such sum as he sees fit to allow me would come to me.

Mr. BECK.—Was that the only arrangement you have with him ?

Mr. JAYNE.—No, sir.

Mr. BECK.—What is it, then ?

Mr. JAYNE.—He voluntarily offered to give me one third.

Mr. BECK.—One third of his fourth ?

Mr. JAYNE.—Yes, sir.

Mr. BECK.—Therefore \$25,000 is divided among the officers—\$12,500 to the three high officers ; \$12,000 comes to you and that informer, of which he gets \$8,000 and you get \$4,000 ?

Mr. JAYNE.—Yes, sir ; that is it.

Mr. BECK.—You had the information before Mr. Moulton ?

Mr. JAYNE.—It had been filed in my office prior to that.

Mr. BECK.—Before he came and gave you that information at all ?

Mr. JAYNE.—Yes, sir.

Mr. BECK.—And that fellow is to get \$8,000 out of this ?

Mr. JAYNE.—Yes, sir ; if the Secretary gives it to him.

Mr. BECK.—Now, do you think if there was no wrong in that case, and no intentional wrong, that it would be right to pay a fellow \$8,000 for that ; is that your idea of justice and fair dealing ?

Mr. JAYNE.—I have not said it was.

Mr. BECK.—Then the settlement of \$50,000 is wrong, in your judgment ?

Mr. JAYNE.—I think they have paid a sum of money in excess of what they should have paid ; that is my opinion.

Mr. BECK.—And certainly \$8,000 to a man of that sort is more than you think he is entitled to ?

Mr. JAYNE.—That may be.

Mr. BECK.—I am asking your opinion of it. I think so ; I have no question about it ; I think he ought not to have anything ; but I am asking you.

Mr. JAYNE.—It's only a question of what the law is. The law is that the Secretary has absolute power to compromise for \$10,000 as well as for \$50,000.

Mr. BECK.—Would it not have been more just and honest for the representative of a Government like this, when there was no intentional wrong, and the officer so said, to have taken the actual amount of loss, than to have mulcted them in large amount, and for men who have done no service ?

Mr. JAYNE.—I think so, sir. I am not here to defend or pass judgment on these people.

Mr. BECK.—I am not asking that ; I am asking your opinion. Is it not your opinion that a great wrong was done ?

Mr. JAYNE.—It is my opinion these men have paid more than they should.

Mr. BECK.—Is the Court bound to keep that money now ?

Mr. JAYNE.—An Act of Congress can take it out of the Treasury after it is once in. It is in the Treasury now.

Mr. BECK.—Can't he take out \$25,000 and distribute it without an Act of Congress ?

Mr. JAYNE.—Certainly he can take out one half of what is in. That would be about \$24,000.

Mr. BECK.—Do you think, with a full presentation of the case as made by you to this Committee, that the Secretary would be justified in paying \$24,000 to these people, or subordinates of the Government?

Mr. JAYNE.—Well, sir, I shall not insist that he would be, by any sort of means.

Mr. BECK.—Do you think if the facts had been known in the Phelps-Dodge case that the overpayments by them, which have been developed here to a very large extent, when the underpayments amounted to only \$1,600—do you think if the amounts they have overpaid had been known at the the time, that that would have mitigated the amount demanded?

Mr. JAYNE.—I do not believe that there was any overpayment, except in this way: where the appraiser raised the goods, or they were raised to make market value upon the entry. I found no case, in all my examination of their books, where they had invoiced their goods at greater prices than they paid for them—not a single instance.

Mr. BECK.—Nor where they were raised here?

Mr. JAYNE.—Oh, yes; they were raised here upon their entries. As I say, I found no such cases. I heard, after the case was settled, that such an element existed. I say if such an element did exist, and had I known it at the time, that it would have made a very great difference with regard to my opinion in that case. If that be true, that they over invoiced as well as under invoiced, it would make a very different case with regard to the apparent intent in the case.

Mr. BECK.—When did you first hear of that?

Mr. JAYNE.—I heard of it after the case was settled.

Mr. BECK.—And the money paid and distributed?

Mr. JAYNE.—Yes, sir.

Mr. BECK.—And never before.

Mr. JAYNE.—I never heard of that over invoicing until I saw this publication.

Mr. BECK.—That has only been out a short time, has it not?

Mr. JAYNE.—This letter, addressed to their friends and the public, is dated April 15, 1873. It probably was not published before its date.

Mr. BECK.—I was struck very much, going over that book (of yours), with the fact that, in nearly all the cases you cited, it (the fraud) was done by collusion with the officers of the Government.—A. I have a list which will show you the exact proportion. I made out a list of them to-day, thinking a question of that kind would be asked, and deeming it a very proper matter for inquiry. Thirty of the cases out of the sixty-one were false weights, obtained by collusion with United States weighers or employés in the weighers' department; six were false liquidations or false classifications, obtained

by collusion with Government officers; nine were undervaluations. In one case, at least, of those it was by collusion with the Government officer. One was a false gauge by collusion with the Government officer; nine were false classifications, obtained by collusions with the Government officers; two were false verifications as to quantity, obtained by tricks—by devices; three were false weights and false damage combined, and one was the warehouse case, with regard to which you have heard; making sixty-one in all.

Q. And some forty-six of them were by collusion with officers?—A. There were about fifty-two or fifty-three of them.

Q. In one form or another, collusion?—A. Yes, sir.

Q. Have any of these Government officers been punished?—A. They have been sent out of the service—dismissed.

Q. And kept out of the service?—A. Yes, sir.

Q. All of them?—A. I think there are a number of officers in the service. It is not my fault, sir.

Q. I am not speaking of fault, sir.—A. I wish to say in that connection that I have never made a recommendation for dismissal of any officer from the Government service.\* I have assumed that it was no part of the functions of a special agent of the Treasury Department to do the thinking of other people. It was merely his business to present the facts.

Q. A number have been dismissed, and a good many are still there, you think?—A. I think there are some officers there who should not be there, and a good many have been dismissed.

Q. And against whom you have reported facts of collusion to the Secretary?—A. A number of them; the receipt of money——

Q. That is, receiving bribes—not doing his duty, I suppose you mean?—A. I mean that men have got their goods through without paying the proper duty.

Q. And paying something to the officer?—A. Yes, sir. And if the officers had done their duty they would not have got them through.

Q. These facts you have reported to the Secretary of the Treasury?—A. Yes, sir.

Q. And these men the Secretary of the Treasury still keeps in office?—A. Some few of them are in office.

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\*The attention of the reader is asked to a comparison of this testimony of Jayne's with the following extract from the testimony of the same witness before the Congressional Committee in 1872:

Q. You say that whenever you found, in the whole course of your service, that an officer had been guilty of fraud, you instantly caused his arrest?—A. I instantly caused his arrest or removal.

Q. Or removal?—Yes, sir.

[Senate Doc. 42d Congress, p. 532.]



Q. Is it possible, under any law, to carry on the office of Custom House with safety to the Government while men who receive bribes are kept in office?—A. No, sir; not in my judgment. And I look upon the taking of books and papers of commercial houses, and compelling them to pay penalty, while the thieves inside the Custom House that have aided them are left unmolested, as no better than highway robbery.

Mr. WOOD.—Who gave you the first information in the Phelps-Dodge case?

Mr. JAYNE.—I wish to say to the gentleman——

Mr. WOOD.—Please to answer the question.

Mr. JAYNE.—I wish to say to the gentleman and to the Committee that I have no objection in that case to answer the question; but in any case where information has been given to me in confidence, and where my name appears opposite the sum of money, I shall not feel at liberty to give the names of the parties who have brought information to me. The courts do not permit that question to be inquired into, and I do not deem that I should be doing justice to other men to state these facts before this Committee or elsewhere. But in the Phelps-Dodge case a man who had been in the employment of Phelps, Dodge & Co., by the name of Hervey, came to me with his attorney.

Q. That was the first information that you had of anything wrong?—A. That was the first information.

Q. Was he then in the employment of the firm?—A. Not then; but he had been in the employment of Phelps, Dodge & Co.

Q. Was there not another clerk of Phelps, Dodge & Co. who also gave you information?—A. Not voluntarily. I suppose you allude to the young man, Kennedy. Mr. Kennedy came to my room once when I had sent for him to the house where he lived. He said to me substantially this: "I am in the employment of Phelps, Dodge & Co.; if I knew anything with reference to them I would not want to communicate it; I know of nothing which is of much importance," and he gave me nothing that was of much importance. I shall crave your indulgence to make an explanation with regard to that, as the young man's name has been mentioned here, and as I am sure that Mr. Dodge would not like to do any young man a wrong, and I certainly would not. Mr. Kennedy was to receive no share in moiety; he had no promise of anything of that kind in any way, shape or manner; but, after the case had been closed and settled, Mr. Kennedy came to my office and said that he had been dismissed from the service of the firm, and that his sister, his mother, and his crippled brother were in want in consequence of it; and that as one of the incidents of the examination, a cruel suspicion had fallen on him, which had done him personal wrong. I went to the

Collector of the Port, and I stated to him: "Here is a young man who has been incidentally harmed by this examination, who has done no wrong. I think he should be provided for, for he says that his mother, his sister and his brother are in want." The Collector said that he thought there would be an apparent impropriety, although there would be no real impropriety, in appointing him. I then went to Colonel James, the Postmaster; told him the same story, and made application, and obtained an appointment for Kennedy. Previously to doing this, however, I had paid him (simply because he came to me and said that he was in want, that they needed assistance at his house, and that he had been wronged by the operations of this law) three or four hundred dollars out of my own pocket. I gave it to him, as he said he needed it for the wants of his family. These are the exact facts with reference to that young man, Kennedy.

Q. Did you know at that time what position Mr. Kennedy occupied with Phelps, Dodge & Co.?—A. I knew from Mr. Hervey that he was an assistant book-keeper in the office of Phelps, Dodge & Co.

Q. I understood you to say that you sent for him?—A. I sent for him.

Q. Is that the way in which he came to your house?—A. He came to the Astor House. Mr. Hervey said that Mr. Kennedy was knowing of certain transactions of the firm, which Mr. Hervey detailed to me verbally. I said, "Will this young man come and make a statement of these facts, that I may verify them?" The young man came, and the statements made by Hervey were not fully verified by Kennedy.

Q. Then Mr. Kennedy went voluntarily to the Astor House to meet you, and you afterward sent for him?—A. He came to the Astor House to see me once.

Q. How often did you see him during the progress of the investigation?—A. I think I saw him but once.

Q. And he then gave you information?—A. He gave me no information that was of much importance.

Q. Did you or did you not state to Mr. Dodge's attorney that you knew of every transaction that was going on in that concern from day to day?—A. No, sir; I never said so. I stated, perhaps, something like this: That Mr. Hervey had friends who communicated with him concerning transactions of that house. I was perfectly square and frank with the attorneys of Phelps, Dodge & Co. all the way through during that investigation. You can call those gentlemen before you, and let them say whether I was or was not.

Q. Have you not said since you have been in Washington that you knew of this over valuation of Phelps, Dodge & Co.'s invoices?—A. I have not so stated.

## AN EXTRAORDINARY HISTORY.

Q. Were not the attorneys of Phelps, Dodge & Co. personal friends of yours?—A. Mr. Wakeman had been formerly Surveyor of the Port of New York, and it is a fact that Mr. Wakeman came to the Custom House occasionally, and I have gone to the room adjoining my office and taken oysters with him. I met him socially frequently, a fact which Mr. Dodge knew before he employed him.

Q. Did not Mr. Wakeman render you essential service in obtaining for you that appointment?—A. He did not. At the time I was appointed I had never seen Mr. Wakeman.

Q. You did not know him at all?—A. I did not know him at all.

Q. Did you not hear from the attorneys of Phelps, Dodge & Co. that they would not pay these men until they knew who the spy was whom you had in their store?—A. No, sir; I never heard such a statement that I recollect.

Q. Who gave you the information that Mr. Stokes was burning his papers?—A. I think Mr. Hervey came to me and told me he had learned that fact.

Q. You are quite sure that it was not Mr. Kennedy?—A. I know that it was not Mr. Kennedy.

Q. It was Mr. Hervey, who was a dismissed clerk?—A. It was Hervey, a dismissed clerk.

Q. Was there any other person in the employment of those gentlemen at that time whom you communicated with?—A. There was.

Q. Who were they?—A. One was Mr. Whitelow, who came to my room voluntarily.

Q. What were his duties in Phelps, Dodge & Co.'s office?—A. I cannot tell you. I think he was a sort of messenger, or mail clerk, or something of that kind.

Q. Was he then in their employment?—A. He was.

Q. What motive had he for telling you of their affairs?—A. I cannot tell, except that he was a friend of Mr. Hervey.

Q. Then through Hervey all the employés of the concern were becoming gradually demoralized?—A. I do not know how badly they were becoming demoralized. I sought nothing from any of these men save the truth, and it was my duty to learn all the truth I could.

Q. You have already stated the names of three parties, some of whom were in the employment of Phelps, Dodge & Co. at the time of the communications, and some of whom had been dismissed. You have named three parties in that concern whom you were in secret communication with in regard to the business of the firm. Now I wish you to name any other that you can remember.—A. There are no others.

Q. You are quite sure of that?—A. I think not.

Q. Be very careful now, because I have information on that subject which, probably, you have not.—A. (After referring to some papers.) It was charged that the firm of Phelps, Dodge & Co. had paid a sum of money to a damage examiner, and that the money had been paid in the presence of an employé of the firm, by the name of Mr. Frank Heller. Heller was in charge of the warehouse, as I should judge from this paper.

Q. What paper are you reading from?—A. I am reading from an affidavit.

Q. Made by whom?—A. Made by Heller. It was charged that Heller was present when money was paid by the Custom House clerk of Phelps, Dodge & Co., Mr. Moore, to a damage examiner, who had been examining some Russian sheet iron. I called Mr. Heller before me. I sent an officer for him to come to my office, not secretly, but in the day time, openly, knowing that the firm would know all about it. I questioned him in reference to that transaction, and he made his statement, and I have here his affidavit with reference to what he saw and what he knew in regard to that transaction. It was in order to confirm or contradict the statement which I had received, and he confirmed it. It was in order to arrive at the truth in regard to the charge which had been made against the firm. I wanted to arrive at the truth.

Q. Had this charge which you now refer to any connection with the charges on which the settlement was finally effected, or was it separate and distinct, and outside of them entirely?—A. If you will read—

Mr. WOOD.—Answer my question, yes or no; I want you to give me an answer, whether it is included or not included in the settlement. Among the allegations made against this house, on which that final adjustment was made by the payment of \$271,000, was that charge included? You are making a charge which is new to the Committee.

Mr. JAYNE—I am making no charge at all. I am answering questions, as I understand, under oath. You ask me a question which is better answered by a letter of my own, written to the Secretary of the Treasury, in which I stated just what was included in my examination. The letter is printed in the pamphlet published by the firm. It is as follows: "In reply to your letter of the 22d, making inquiries in reference to what was covered in my report in the case of Phelps, Dodge & Co., I would say that my investigation covered all the importations of that house for five years next preceding January 1, 1873, and that the matter called to the attention of the Department related to the under valuation of merchandise, as well as suspected payment of money for damage allowance during that period."

Q. This affidavit which you spoke of was made by Hervey?—A. No, sir; by Frank Heller.

Q. Who was Frank Heller?—A. A man in their employ.

Q. He there refers to a fourth individual guilty of bribing a damage examiner.—A. Let me state, so that you will not misunderstand me. Among the charges made against this firm by Mr. Hervey was a charge that that firm had made payments of money to damage examiners in the appraisers' department for allowing excessive damage allowances on Russian sheet iron. He said to me that Mr. Heller was present at the time when one of those payments was made to the examiner, and that Mr. Heller would either verify or contradict his statement. I thereupon sent to the warehouse of Phelps, Dodge & Co., and had Mr. Heller come to my office (I did it in the day time, openly), and Mr. Heller made his statement.

Q. You heard Mr. Dodge's statement before this Committee?—A. I did.

Q. This is the same case which he referred to himself as the Russian sheet iron case, is it not?—A. The statement of Mr. Dodge may have been his understanding of the case, but the charge was that at various, different and diverse times this firm had paid sums of money to the damage examiners in order to induce them to allow greater damages than had actually occurred on the voyage of importation; that these sums had been paid by their cashier, Mr. William Dodge Porter, a nephew of the senior of the firm, on tickets by some member of the firm, to a Mr. Moore, who was their Custom House clerk; that Mr. Moore had disbursed these moneys to the damage examiners; that the payment had been made in the presence of Mr. Hervey, and that one of them had been made in the presence of Mr. Heller. He called particular attention to that one. I called Mr. Heller before me and took his statement, in order to verify or contradict this statement of Mr. Hervey; and though all the men alluded to, including Mr. William Dodge Porter, the nephew of the head of the firm, did state, on their oath, that sums of money had been paid to induce excessive damage allowances, yet I could connect no particular transaction with any particular importation. The evidence appeared to show that the allowances and the examination of those goods did not occur until three, or four, or five weeks after the goods had gone to the warehouse of the firm; that they kept a large quantity in the storehouse, and that when the iron was brought in there it was a very difficult thing to examine it and ascertain the exact amount of damage. While it appeared that sums of money were paid to these examiners, yet I was unable to fasten their payments on any particular importation, and hence no importations of Russian sheet iron were included in the suit against the firm.

Q. Have you Mr. Porter's affidavit there?—A. I have.



Q. Please read it to the Committee.—A. Let me state that this affidavit was written in the office of Mr. Porter, and on his own paper, at his place of business. Here is the original. I went to his store, asking questions, and he made this statement, and I wrote out the affidavit and he signed it and swore to it, or rather he affirmed that it was true. He had conscientious scruples against swearing.

Q. You wrote it yourself?—A. I wrote it myself from his statement. Mr. JANYE, read the affidavit, as follows:

"UNITED STATES /  
" vs. /  
" PHELPS, DODGE & CO. }

"SOUTHERN DISTRICT OF NEW YORK, ss:

"William D. Porter, being examined, affirms as follows: that he resides at Orange Valley, New Jersey, and that he is engaged in business at No. 33 Beekman street, New York, and that from 1854 until October 8, 1872, he was employed by Phelps, Dodge & Co., and that from the commencement of service with the said firm he was assistant cashier until eleven years ago, when he became cashier, which position he held until he left the said firm in October last. And deponent says that while so employed he kept the cash book and cash account of the said firm, and one Peter N. Moore had charge of the Custom House business of the said firm, and was known as the Custom House clerk, and one Charles F. Hervé was employed as assistant Custom House clerk. And he further says that at various times the said firm received allowances from the Custom House for damage on Russian sheet iron, and that the said Moore, about the time of the said examinations, drew from deponent as cashier various sums of money, amounting at different times to one hundred or one hundred and fifty dollars; and that the said sums were paid by him as such cashier by order of some member of the said firm, and that such orders for him to pay the said sums from his desk came generally from one of the three partners named, James Stokes, Anson P. Stokes and Thomas Stokes respectively; and he says that the sums so paid were charged by him on the cash book of the said firm as 'Custom House expenses' or 'Custom House fees,' and were carried from the said cash book to the ledger of the said firm to the account of 'charges;' and he further says that said sums of money were paid in addition to all legitimate Custom House expenses, such as entries, permits, warehouse bonds, withdrawals and other like charges: and he further says that, on several different occasions during the last four years, the said Charles F. Hervé has stated to him that the sums so drawn by Mr. Moore or some member of the firm had been paid by Mr. Moore to Custom House officers in his presence, and he says that he stated to the said Hervé that he (Porter) did not wish to know anything about their transactions; and he says further that the said Hervé has been employed in the same office with him for years, and that he believes him truthful and reliable in all his statements; and he further says the statements of the said Hervé in regard to the payments of money to the customs officers were made to him at the time of the payments, as near as he can now recollect.

"Subscribed and affirmed this 6th day of February, 1873, before me,

"WM. D. PORTER.

"B. G. JANYE,

"Special Agent United States Treasury Department."



Mr. JAYNE continued : Mr. Porter made this affirmation. Mr. Porter appeared to be a thoroughly reliable, conscientious man, who wished to do no man harm, but to tell the exact truth without variation at all ; and the next day he came to my office and said, "Mr. Jayne, I suppose when you asked me to tell the truth I should have told the whole truth, should I not ?" I said, "It was my understanding that you did so." He said, "I did not tell all ; but I went home and stated to my wife what I had done, and we had a season of prayer over it ; and I have concluded to come here and tell you the balance of the story." He said, "These men have been my friends, but the truth should be told." He then voluntarily made this additional statement :

" UNITED STATES  
 " vs.  
 " PHELPS, DODGE & Co. }

" SOUTHERN DISTRICT OF NEW YORK, ss :

" William Dodge Porter affirms that he has been cashier of the firm of Phelps, Dodge & Co., importers, doing business at Nos. 11 to 21 Cliff street, in this city, from 1862 until 1872. And he says that, in his statement of yesterday, he made no allusion to amounts paid to United State weighers for duplicate returns, but the amounts paid, as then stated, were for other matters not relating in any case to the weight of goods. And he farther says that his attention was called, by one Charles F. Hervé, at the time (which he thinks was about one year ago) to duplicate invoices of a quantity of dress goods consigned to D. Willis James, a partner of the said house, wherein the value and footings were differently stated, the difference being more than one third the value. And he says that he was informed at the time that the one invoice represented the cost price for the purpose of payment and remittance, and the other was for use in the Custom House. And he further says that, at the time of making the payments mentioned yesterday, he several times remonstrated with the said Moore, telling the said Moore that he, Porter, did not believe it right to pay these sums of money to the officers of the Government, as they (the officers) were paid for their services by the Government. And he says that the said Moore would make answer that 'We have to do it,' 'It's customary,' or that 'It's all right,' or words to that effect. And he further says that he believes that William E. Dodge, Sr., knew nothing of these payments in any shape or form.

" WM. D. PORTER.

" Subscribed and affirmed this 7th day of February, 1873, before me,

" B. G. JAYNE,

" *Special Agent United States Treasury Department.*"

Mr. DODGE.—May I make one single remark to the Committee ?

The CHAIRMAN put the question, and permission was given to Mr. Dodge.

Mr. DODGE.—The facts are simply and solely these : There was a friend who bought a dress in Paris for Mrs. James, the wife of one of my partners.

She remonstrated against the price which the dressmaker charged for it in the bill that was sent to the friend who bought it, and she insisted on it that she would not pay the price. The dressmaker made another bill. Mr. James was away South at the time when that bill came home. Both bills, subsequently, came back in the same letter together. One of the bills was the one that was paid and receipted; the other had no receipt at all. That was the bill that was rejected. Out of respect for my partner, who is a little above undertaking to cheat upon a single dress, I wish to state that fact.

And now I wish simply to state this: That we heard nothing of this affidavit of Mr. Porter until some six months afterward. He is a nephew of mine, an excellent young man, to whom we gave capital to go into business, and who is established in business just around the corner from us. He always had our confidence. When we heard of this affidavit we sent for Mr. Porter and asked him what it meant, and he made this statement: That Mr. Jayne came into his office one day and said to him, very blandly, "Have you received a letter from your cousin, Mr. William E. Dodge, stating that I am to call here this morning?" He said he had not. "Did not Mr. Dodge, in person, tell you that I was coming?" "No." "Well, it makes no difference; I want to make some inquiries." He went on and made these various inquiries, and after he had made some few inquiries, Mr. Porter said, "I do not know who you are or why you should make these inquiries of me." As I understand the matter, Jayne then flew into such a passion as you saw him in the other day. He opened his coat and said, "I will let you know who I am. Here is my badge of office. Now, you said, in conversation, so and so; I will put it right down upon paper." He sat down and wrote, and Mr. Porter signed it.

All I have to say in regard to the Russian iron matter is simply and solely this: This Russian iron goes into the public stores when damaged by salt water, and it is a matter of immense importance that it should be examined immediately after it goes to the warehouse. When it is being opened and unpacked for the purpose of having the inspectors go to see it, the men would, in the regular course of business, stay from the hour of ten in the morning till three or four in the afternoon; but we have again and again engaged these storekeepers to keep on working as long as they could see, so that the examiners might come in the morning and make their appraisement. If there were eight or ten men at work over hours we have had to pay them ten or twenty or thirty dollars for the work over hours. We have done so again and again. Beyond that we never paid a dollar to any appraiser in the world, never. It is utterly impossible, in the city of New York, where business has to be done in such a hurry, to

have the business done, unless you engage men to work over hours. That must be done, or else goods may be damaged or destroyed.

Mr. WOOD (to Mr. Jayne).—Leaving that subject, please to tell us the *modus operandi* of the process which you have adopted yourself with reference to the seizure of books and papers.

Mr. JAYNE.—I wish, first, the indulgence of the Committee, to say this : That on going to Mr. Porter's office I found that he had not arrived. He lived at Orange Valley. I was at his office in the morning, a little before he arrived. I sat down in the office and waited until he came. I told him, immediately upon his arrival, who I was and what I had come for, and that I wished to ascertain the exact truth. No unkind word ever passed between Mr. Porter and myself, and I never stated to him that I had the letter from Phelps, Dodge & Co., or that I anticipated that there was one ; and that picture which has been made here, to my personal knowledge, is not so, so help me God.

Mr. DODGE.—We have the affidavit of Mr. Porter to that effect.

#### REBUTTING AFFIDAVITS.

In further answer to the statements of Jayne as above made to the Committee by Mr. Dodge, it is desirable, and at the same time essential to the completeness of this narrative, to here say—that subsequently to the hearing at Washington, the charge that employés of Phelps, Dodge & Co., under the sanction or direction of its firm, had paid money at different times to influence the judgment of “damage examiners” of the Custom House, was reiterated in an article (evidently prepared by Jayne) which appeared in the *N. Y. Daily Graphic* of May 11th, 1874. The result was to call forth from the Custom House officers and other parties accused the following series of affidavits (contradicting the statement of Jayne in every particular), and which received equal publicity in the columns of the *Daily Graphic* of May 16th, 1874.

“ To the Editor of the GRAPHIC.

“ Our attention has been called to certain affidavits published in the *Daily Graphic* of last Monday reflecting upon us and upon other officers in our department. Each of us has had a business experience of over thirty years, and we have occupied our present positions as Custom House damage examiners and appraisers, one of us for nine and the other for five years. So far as we know this is the first time that the character of either of us has ever been assailed ; and we must ask you to publish in refutation our affidavits, together with the letters of Messrs. Moore, Porter and Frank Heller, who at our request have kindly made sworn statements in support of our own.

“ Mr. Gardner, also referred to in the affidavit of Charles F. Hervé, is dead.

“ Respectfully,

“ SAMUEL BOYD.

“ SAMUEL J. FARNUM.”

"CITY AND COUNTY OF NEW YORK, STATE OF NEW YORK, ss.:

"Samuel Boyd, being duly sworn, says that he resides at Montclair, N. J.; that he is now, and has been for the last nine years, a damage examiner and appraiser in the New York Custom House; that there is not now connected with the Custom House, and there has not been so connected for the last nine years, any other damage examiner and appraiser by the name of Boyd: that he has read in the *Daily Graphic* of May 11 an affidavit of Charles F. Hervé, and that the statements made therein that said Hervé has seen one Moore, Custom House clerk of PHELPS, DODGE & Co., pay various sums of money to one Boyd, damage examiner of the Custom House, meaning the deponent, and that said Moore presented to the deponent a bronze clock, are entirely untrue. The deponent says that some years ago he purchased an imitation bronze clock at the regular wholesale price from the Ansonia Brass and Copper Company, and that he paid five dollars for it; and that Mr. S. J. Farnum also purchased one at the same price. The deponent further says that he has never received, directly or indirectly, any money, or the loan of any money, nor any gift of any kind, nor any reward or remuneration of any description whatever from said Moore, or from PHELPS, DODGE & Co., or from any person or persons in the employ of or representing them; and that the statements and suggestions to that effect, published in the *Daily Graphic* of May 11, are utterly false, and without any foundation in fact.

"SAMUEL BOYD.

"Subscribed and sworn to before me, this 15th day of May, 1874,

"PHILIP JORDAN,

"Notary Public, N. Y. Co."

"CITY AND COUNTY OF NEW YORK, STATE OF NEW YORK, ss.:

"Samuel J. Farnum, being duly sworn, says that he resides in the City of New York; that he is now and has been for five years a damage examiner and appraiser in the New York Custom House; that for five years there has been no other damage examiner by the name of Farnum in the Custom House; that he has read in the *Daily Graphic* of the 11th of May an affidavit of Charles F. Hervé, and that the statements therein made, that said Hervé has seen one Moore, Custom House clerk of PHELPS, DODGE & Co., pay various sums of money to one Farnum, damage examiner in the Custom House, meaning the deponent, and that the said Moore presented to the deponent a bronze clock, are entirely untrue. The deponent says he and Mr. Boyd once purchased two imitation bronze clocks, at the regular wholesale price, from the Ansonia Brass and Copper Company, and that they paid five dollars apiece for them. The deponent further says that he has never received, directly or indirectly, any money or the loan of any money, nor any gift of any kind, nor any reward or remuneration whatever, from said Moore, or from PHELPS, DODGE & COMPANY, or from any person or persons in their employ or representing them, and that the statements and suggestions to that effect printed in the *Daily Graphic* of the 11th instant are entirely false and without any foundation in fact.

"SAMUEL J. FARNUM.

"Subscribed and sworn to before me, this 15th day of May, 1874,

"PHILIP JORDAN,

"Notary Public, N. Y. Co."

"NEW YORK, May 15, 1874.

"MESSRS. SAMUEL BOYD AND S. J. FARNUM.

"*Dear Sirs*—You have requested me to reply to the statements published in the *Daily Graphic*, 11th instant. Hervé states that I paid money to you and to other Custom House damage examiners, and presented each of you with a bronze clock. These statements are each and all of them entirely false.

"The suggestions in the other affidavits, skillfully made to appear as if sustaining them, are without real foundation. I remember that you did each purchase and pay for, at wholesale price, a cheap, east iron, bronze colored clock, from the store of the Anzonias Brass and Copper Company, which is in PHELPS, DODGE & Co.'s building, but during the twenty-eight years that I have been at the head of their Custom House Department I never paid to you or to Mr. Farnum, or to any Custom House damage examiner, any money, directly or indirectly, nor did I ever give either of you a clock. I do not believe that any such payment or gift was ever made by or for the firm, and, from the position held by me, am confident that such payment or gift could not have been made without my knowledge.

"Very truly,

"P. N. MOORE.

"CITY AND COUNTY OF NEW YORK, ss :

"I, Peter N. Moore, being duly sworn, do depose and say that the statements contained in the foregoing letter, written and subscribed by me, are true.

"Sworn to before me, this 15th day of May, 1874,

"THOS. J. SANSON,

"Notary Public, N. Y. Co."

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"NO. 33 BEEKMAN STREET, NEW YORK, May 15, 1874.

"MR. SAMUEL BOYD.

"*Dear Sir*—In reply to your request, I am very glad of the opportunity to say that I never knew of any money being given to you, or to any other United States damage examiner. I do not believe any such payment was ever made by or for PHELPS, DODGE & Co., nor have I ever so stated. The statement and suggestions in Hervé's affidavit that, on the order of a member of the firm, I paid a large sum of money to Mr. Moore, and that I was informed that this money was paid to Custom House examiners, is wholly and entirely false. I never saw or heard of this affidavit of Hervé until after it appeared in the *Daily Graphic* of the 11th instant. I have often paid to Mr. Moore small sums of a few dollars at a time, to be given to storekeepers, watchmen and subordinates in the Custom House for extra hours' work, and have repeatedly said that such payments, although customary among importers, are not right, and ought not to be necessary; but I am greatly surprised to find that these expressions of mine have been so artfully combined in the statement of my examination, as prepared by Special Agent Jayne for me to sign, that they are made to appear to support the monstrous falsehoods of Hervé.

"Respectfully yours,

WILLIAM D. PORTER.

"CITY AND COUNTY OF NEW YORK, ss :

"William D. Porter, being duly affirmed, says the statements made in the foregoing letter are true of his own knowledge.

"Affirmed before me, this 15th day of May, 1874,

"ISRAEL MINOR, JR.,

"Notary Public, New York County."



"NEW YORK CITY, May 13, 1874.

"MR. SAMUEL BOYD.

"*Dear Sir*—You have asked me to make a statement about my affidavit published in the *Graphic* newspaper of last Monday. That affidavit was written out by Mr. Jayne, at his office in the Custom House, and was signed by me without my reading it. I am a German, and it is hard for me to read English in writing. I am a porter in the employ of Messrs. PHELPS, DODGE & Co., and have charge of overhauling Russia sheet iron. As to any payments of money having been made to you, or to any other examiners, I have no knowledge or belief that any such payments were ever made by Messrs. PHELPS, DODGE & Co., nor by any one for them. Mr. Jayne makes me to say in my affidavit that Hervé called my attention to the payment of money by Mr. Moore to Custom House examiners. If Hervé told me that money was so paid, I did not see it paid, nor do I believe it was paid, nor have I ever so stated.

Respectfully yours,

"FRANK HELLER.

"Subscribed and sworn to before me, this 15th day of May, 1874. In witness whereof, I have hereunto set my hand and affixed my official seal.

[Seal.]

"WILLIAM H. CLARKSON,

"Notary Public for New York County, N. Y."

## EXAMINATION OF JAYNE BEFORE THE COMMITTEE OF WAYS AND MEANS CONTINUED, MARCH 11TH 1874.

The CHAIRMAN.—Who furnished you with the duplicate invoices in the case of Phelps, Dodge & Co.?—A. They were brought to me by the attorney of the informer; that is, those I had in advance of getting their books. About two thirds of all of them were found attached to their books and in their possession.

Q. Those that were brought before you seized their books were brought by the attorney of the informer?—A. Yes, sir.

Mr. ROBERTS.—Is it your uniform rule to return all books and all papers that have been seized?—A. Unless the papers are the true invoices of the goods, in which case they belong, attached to the invoice, in the Custom House, by law. They have sometimes, however, been returned.

Q. Did you return the papers in the case of Phelps, Dodge & Co.?—A. I did not return all of them, sir. They belong with the papers in the Custom House.

Q. Did you return all the papers which the informer gave to you in that case—all the papers that came from the house of Phelps, Dodge & Co.?—A. I returned every paper save where they were statements of the cost of goods; every scrap of paper.

Q. I understood you to say there was a burglary in that case, or in connection with that case?—A. I understood there had been a burglary.



Mr. KASSON.—He did not say in connection with this case, but prior to it.

Mr. JAYNE.—Not in connection with the revenue case at all.

Mr. ROBERTS.—But there were papers that had been taken?—A. That was a matter entirely of newspaper notoriety. I spoke of the attorney of this informer having been the attorney for a man who had committed a burglary prior to that time.

Q. You knew that some of the papers which the informer brought to you had been stolen from Phelps, Dodge & Co.?—A. I knew they were bills of goods purchased by those gentlemen.

Q. You knew the papers had been stolen from the house?—A. Well, they were brought to my office. They came to my office in the hands of an attorney.

Q. And with the statement that they were procured from the house of Phelps, Dodge & Co.?—A. That they were copies of bills of goods that they had purchased in Wales.

Q. In a word, they had been stolen from the house of Phelps, Dodge & Co.?—A. Well, sir, you shall name it.

The CHAIRMAN.—Was that in connection with the burglary?—A. Not at all. It had nothing to do with it whatever, as I understood.

Mr. ROBERTS.—Have you any of those papers now?—A. I have those papers attached to those entries, that showed the original cost of the goods—some of them.

Q. Do you regard those papers as the property of Phelps, Dodge & Co.?—A. I regard them as the property of the United States, and as belonging to or attached to the entry, and it was the duty of Phelps, Dodge & Co., when they received them, to have brought them to the Custom House and to have attached them to the entry, as they swore upon each entry they would do.

Mr. DODGE.—I would like to ask you if you did not know the papers that you had, and which were not invoices in any shape or manner, and which you tried to make invoices, were stolen property?—A. I say I knew they were, by comparison with the invoices in the Custom House, bills of the same identical goods; and when I found they were in the same handwriting with the papers in the Custom House I assumed that they had come from the parties from whom they had purchased these goods. I did not stop to try side issues, any more than a court questions the source of evidence. Mr. Eaton gave you a constitutional argument on that point. An officer has no right, more than a court has, to try side issues.

The CHAIRMAN.—Did you not promise the attorney of Phelps, Dodge & Co. that, if the money were paid, all the papers that had been taken

from them should be returned? That question is put to you by Mr. Dodge, through me.—A. There was no stipulation with regard to them.

Mr. BECK.—The lawyer of the informer brought you the papers?—A. Yes, sir.

Q. And you presumed they were stolen, and I suppose he knew it?

A. It is not my duty to presume in any way. The law makes it my duty to ascertain if any fraud has been committed; to avail myself of every source of information.

Q. Would the courts of New York allow a lawyer to practice at their bar when he was an attorney of a man known to be a thief, and dealing with stolen papers?—A. I believe the courts in New York and in every other State in this Union allow attorneys to defend thieves and protect them.

Q. But do they allow them to bring suit and get fees out of the proceeds of plunder when they themselves have been the agents or aiders and abettors of the thieves?—A. I do not get the exact point of your question. Please state it again.

Q. I will put it in this way: Did the Secretary of the Treasury know, when he paid you that money, that you were to give two thirds of it to the thief and his lawyer?—A. The Secretary of the Treasury knew that I presented evidence, and I told him the whole story of its source, and how the case came to me, and all about it.

Q. And knew that this thief and his lawyer were to get two thirds of it? A. Well, you call him a thief; yes, sir.

Q. Yes, sir; I do call him a thief. And the Secretary of the Treasury knew that he was to get two thirds of it, and he paid the money?—

A. The Secretary of the Treasury knew that my name was put on that information. I do not suppose he ever made an inquiry about that.

Q. I thought you said you told him all the facts in the case.—A. I told him how I got the evidence in the case.

Q. And the amount to go to those men?—A. I do not know that I told him that. I do not know that he asked me that question. I should if he had asked me.

Q. Do you think he did?—A. I have no recollection of ever having a conversation with him in regard to that point. If he had asked me I should have told him.

Q. Do you think it was your duty, as an officer of the United States, to communicate that fact to the officer who was to pay out such a large sum of money—the fact that two thirds of the portion coming to you was to go to a man and a lawyer, one of whom was a thief and the other was aiding and assisting a thief?—A. You name him a thief.

Q. I will ask you whether, if you were to raise your hand to heaven, you could say you did not believe, and had information upon which you acted, that they were stolen papers?—A. I do not know that I am called upon to say whether I consider it a theft or not.

Q. Do you refuse to answer the question? It is a simple one. Did you not know, and do you not believe now that those papers were stolen; and did you not believe it at the time of making an agreement to give them two thirds?—A. I believe those papers were copies of bills showing the original true price of these goods that should have been placed in the Custom House at that time.

Mr. BECK.—Mr. Chairman, I object to that answer.

Mr. JAYNE.—It was no part of my duty to try that issue, but it was my duty to ascertain if the law had been violated.

Q. Now, Mr. Jayne, you can answer or you can refuse to answer. I will put a question that you cannot misunderstand. Do you not believe that at the time that you got those papers and made the contract to pay that man and his lawyer two thirds of what you could make out of the case, that they had come by those papers dishonestly? Do you not so believe? You can say yes or no, or you can refuse to answer, whichever you please.—A. I do not think that is a proper question to put to me in that form.

After some discussion as to the propriety of the interrogatory, the question of Mr. Beck was reduced to writing by himself and propounded to the witness, as follows:

Q. Did you know or believe, at the time the papers of Phelps, Dodge & Co. were brought by the man who brought them and his attorney, that the papers had been stolen or surreptitiously taken from the firm? Did you contract to pay them two thirds of what you might recover, with knowledge of these facts, and did the Secretary of the Treasury pay you with knowledge or information that two thirds of it went to those parties?—A. At the time the papers were brought to me by the attorney of the informer I did not ask him the source from which he obtained them, and he did not tell me. What I believed is perhaps what any one of you would believe under such circumstances. I did not contract to pay them at all. Under the law the man bringing the information to my office was entitled to one fourth of the net proceeds, no matter who works up the case. I was entitled to nothing, save such sum as they should voluntarily pay me, but they requested that I should put the case in my name and should pay them two thirds of the amount received, which I did. I do not remember that I ever told the Secretary whether the whole sum was to be paid to the man who had brought the information to my office or not. The case was discussed pretty extensively in the papers for several weeks before this sum of money

was paid into court. The name of the informer—the man who brought this information to my office—was printed, I presume, in every newspaper in the United States, and was a matter of notoriety all over the world. I suppose the Secretary of the Treasury read the papers, and knew. I do not recollect ever having any particular conversation with him in regard to whether I was to retain any share of that money or not.

Mr. SHELDON.—Who was the money given to?—A. It was awarded to me.

Q. By the Secretary?—A. Yes, sir.

Q. How could he award it to you if he knew the other man was the informer?—A. I reported the case, and there was no adverse claim. It belonged to me if there was no adverse claim under the law.

Mr. BECK.—What is the name of the man, and what is the name of his attorney?—A. The name of the man is Charles F. Hervey. He had three or four attorneys and counsel; they were associated together; I do not know in what way, or in what form, or anything about that.

Q. Which one came to you with the papers?—A. Well, sir, I think there were two of them that came with him in the first place.

Q. And brought the papers with them?—A. Yes, sir.

Q. Who were they?—A. Dudley Field and Ethan Allen.

Q. How much money did they get?—A. I gave my check for two thirds of the money.

Q. Who to?—A. I think it was made payable to the order of Ethan Allen.

Q. A lawyer in New York?—A. Yes, sir.

Q. Dudley Field was one of them, too?—A. Yes, sir.

Q. He came with this man?—A. Yes, sir; he came to my office. He is a son of David Dudley Field. I think there were two other lawyers employed; one was named Crosby, formerly of Michigan.

Q. Did all those men take part of the money?—A. I couldn't tell you, sir, in what way they divided it.

Q. But you gave the money to Ethan Allen?—A. I gave the check to Ethan Allen. He was authorized to receive it.

Q. Did these lawyers, or any of them, in any of their conversation with you, tell you, or did this man Hervey say in their presence, that he had obtained these papers surreptitiously, or stolen them from the books?—A. He never told me how he came by them, and I never asked him.

Q. Didn't you know they were torn out of their books, and could you not see where they were torn from?—A. When I got their books I found where the papers I had matched on. It was pretty good evidence that they were torn out. There were lots of others in their books.

Q. Did these lawyers know that, at the time they came to you and made that contract?—A. I cannot tell you that. I was not admitted to the private consultations between them.

Q. Did they never tell you?—A. I think not, sir.

Q. Nor Hervey?—A. I think not, sir. I never asked him any question about that.

Q. How did you happen to look and see where the papers fitted? What put you on that track?—A. For instance, one of these bills being in the same handwriting as the invoice in the Custom House, it would state E and a diamond 1, 4, x; cost in Wales thirty-two shillings; and in the Custom House invoice it would be thirty shillings. On the paper itself would be the date of the shipment and the ship it came by. I would get up the Custom House invoice of the same identical ship, take the mark, and trace the goods, and find it in the Custom House invoice. Then I would turn to their invoice book to see where it was copied in their invoice book, and I would take this paper, if it had been pasted on—as a great many of them were, on the margin—and lay it on there, and see where it had been torn off. That I discovered.

Q. You say you had no reason to believe, from conversation with these men beforehand, that they had been stolen?—A. I say these men had never told me that the papers were stolen, and I never asked them the question. They brought the papers to me.

Q. They never told you where they got them?—A. No, sir; they need not. The papers themselves would indicate that they were the goods of Phelps, Dodge & Co.

Q. And you now tell this Committee that you had no reason to believe, from anything that occurred with these men, that these papers were surreptitiously taken?—A. I do not tell them any such thing.

Q. Have you not reason to believe it? You either do or do not.—A. My dear sir, I suppose we all have more or less powers of reason, and I suppose those facts would point to certain other facts which are inevitable and conclusive.

Q. Mr. Jayne, there is a very direct way of answering a question if a man is willing to tell what he knows. You either did or did not believe it.—A. Well, what I believed is not evidence; but what I believed I acted on.

Q. You did know, before you drew the money, and before you divided it with these lawyers, that they had been surreptitiously taken from those books?—A. I knew they had come from those books, undoubtedly. I did not know how they had been taken.

Q. Did you not know that they had been surreptitiously taken from those books, as well as you know that you are sitting in that chair, before

you drew the money from the Secretary and paid it over to those men? Answer that question yes or no, or refuse to answer it.—A. I had no doubt those papers had come right from those books.

Q. Did you not know that they were surreptitiously taken, and have you not told this Committee they were?—A. I think not.

Q. Just say whether you will answer that question or will not.—A. Yes, sir; I believe that they came from there.

Q. Why didn't you say so, then?—A. Well, I have.

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### CLOSING STATEMENT OF MR. WILLIAM E. DODGE.

At the conclusion of Jayne's examination, Mr. George Bliss, U. S. District Attorney for the Southern District of New York, came before the Committee (March 12th) and reviewed at length the working of the Custom House laws, and detailed his own experience as an United States official in their administration; his remarks being mainly in opposition to any legislative action on the part of Congress, looking to essential modifications or repeal of the (then) existing statutes, and in direct antagonism to the conclusions and petitions of the various Boards of Trade and Chambers of Commerce of the country. In respect to the case of Phelps, Dodge & Co., Mr. Bliss also took the position that the compromise made by this firm with the Treasury Department was entirely voluntary, and, in fact, solicited on their part; that there was nothing of "terrorism" used as an agency for hastening a settlement; and that the whole conduct of the firm was, in fact, an equivalent to the admission of wrong doing on the part of some if not all of its members.

At the conclusion of Mr. Bliss's remarks, therefore, Mr. William E. Dodge again asked permission of the Committee to speak in vindication of himself and of his partners, and in reference to the points specially made against them by the District Attorney, and permission having been given, Mr. Dodge accordingly addressed the Committee as follows:

MR. CHAIRMAN AND GENTLEMEN OF THE COMMITTEE—With the consent of Mr. Schultz I will say a few words, which I deem necessary for my own vindication and that of my firm. I think the District Attorney may have left certain impressions upon the minds of the Committee to which I desire to reply.

The CHAIRMAN.—Proceed, sir.

MR. DODGE.—In the remarks I made a few days ago I said it was not so much the \$271,000 that we cared about as it was the fact that those indi-



viduals who had received their shares of the moiety had continued down to this day, *everywhere*, to assume that Phelps, Dodge & Co. were guilty of fraud, and the effort of the District Attorney in his opening remarks has been to make that impression deep in your minds. He sought first to show that there was very great anxiety on the part of Phelps, Dodge & Co. in the matter; that they complained that it was a case of terrorism, while there was none; that they were very anxious to make a settlement; and this fact has been stated again and again as positive proof of their guilt. In addition to that they have stated, and the District Attorney stated to-day that we had admitted positively that we were guilty.

MR. BLISS.—Excuse me, Mr. Dodge, I did not say so.

MR. DODGE.—I beg your pardon, sir; no other inference could be drawn from what you did say. Now, since the day that this matter was first brought to our notice, and we examined into the case, we have never refused to admit openly, everywhere, before friends and foes, that we had committed irregularities, and had unintentionally made ourselves liable to the law; but we never have anywhere, under any circumstances or in any position, admitted to any living man that we did it intentionally. Again, this \$1,750,000, as I said before, was the terror held over us—the pistol at our ears. I have so stated before, and I say it now, sir. And I will state the reason that we were so anxious to have it settled—why I came to see Mr. Boutwell two or three times. As I stated the other day, he treated us kindly, and, perhaps, if we had taken his advice we should have done differently, but we believed that if we left the matter open we did not know who would settle it, as Mr. Boutwell was on the eve of his election to the Senate, and we were anxious to have it settled, because we would rather pay \$271,000 than have the Government of the United States hold over us a judgment of \$1,750,000, and have that telegraphed the world over, and then run the risk of getting it reduced. It was a large sum to have hanging over us, and if we had had to pay that amount what would this special agent have received? He would have received between two and three hundred thousand dollars; my friend sitting here (Mr. Bliss) would have received over \$17,000, and the Collector over \$100,000. We were not prepared to have such a judgment as that rendered against us, and to trust to any living man for a settlement, with such influences surrounding him. That was the reason we were anxious to have it settled, even by the paying of \$271,000. I stated that it was a case of terrorism, and so it was, when there were not less than seven eminent lawyers engaged on the other side, and constantly contriving to see how they could catch us in the matter. I felt that, under these circumstances, entrapped as we were by the law, we were fortunate in settling even by

the payment of \$271,000 for an alleged fraud, not known to us, of \$1,600. Never, until this man stood here to-day, have we been able to find out anything about these nine invoices. It is the first time that we could find that out. We agreed that we would pay the amount of the aggregated items that they said were undervalued, but when the sum came to us it was monstrous, and we did not understand it. But when the report comes out it says, "Besides two whole invoices that were confiscated because the charges had not been added." Now, I have the law and the decision of the courts, that we sent to our friends in Penang, saying that in case these goods were sworn to at the port where they started from and went to another for convenience, the date of the voyage commenced at the time when they first sailed, and purposely we had put on the invoice (he says it was put across the invoices) that the charges were not added. Did that look like fraud? No, gentlemen, there is an effort making to charge us with fraud, but I stand before the people of the United States to-day innocent, and so does my firm, of any charges whatever, except such as are made by these men, who want to sustain this moiety system, and make out that our case was a very bad one, in order that they may go on with their moieties.

Mr. FOSTER.—I think you stated, when you were here the other day, Mr. Dodge, that there were lawyers, members of Congress, who were acting as counsel for these parties?

Mr. DODGE.—I did say so.

Mr. FOSTER.—Well, I find that this Committee and myself have been subjected to criticism because we brought out the name of only one such member, while there were others.

Mr. DODGE.—I only intended to speak of two. I have no hesitation in stating who they were, after all that has been said before this Committee. I have purposely avoided naming them heretofore, but, if the Committee wish, I have no objection.

The CHAIRMAN.—You may answer the question.

Mr. DODGE.—I suppose there is no doubt in the Committee's mind on the subject now, as it was admitted last night by the special agent that he did employ, in one case specially, General Butler as counsel. I will add that Senator Conkling was in New York, and in consultation with these gentlemen at the time when for two days the question hung whether this thing should be settled or not, and hung simply on the fact that Mr. Laffin said the crime was so enormous that, so far as he was concerned, he never would consent to settle it short of the payment of \$500,000 by Phelps, Dodge & Co. I think Senator Conkling advised him to do better. I only wish he had stuck to it one day longer.

Mr. FOSTER.—Is that all you know about it?

Mr. DODGE.—That is all I know about it.

## REMARKS OF HON. JACKSON S. SCHULTZ.

From the remarks of Hon. Jackson S. Schultz, Chairman of the Committee of the New York Chamber of Commerce, who followed, before the Committee, Messrs. Bliss and Jayne, and reviewed at considerable length the statements of these two Federal officials, are made the following extracts, having a more or less direct bearing on the case of Phelps, Dodge & Co. :

Mr. CHAIRMAN—I believe that you, gentlemen of this Committee, will agree with me that the special agent of the Treasury Department has brought against the Custom House in the City of New York a stronger indictment than ever was framed and presented before. And I believe you will agree that if we can rely upon his statements as to the condition of things there, it was high time that an unsophisticated youth from the western part of the State of New York, “with hay seed in his hair and grasshoppers upon his garments,” should come down to morally revolutionize our City and our Custom House. In the year 1869 there came down to New York this youth, having, doubtless, all the qualities that he described to you as the qualities so necessary in an officer of this kind—so necessary in an officer who should draw from the public treasury or from the citizens of New York \$100,000 a year for his services. He came down there and labored with us. He made reports to the different officials of the Government, especially to his superiors. After laboring for four years, what was the result? He told us he made those reports, and they were not heeded. He charged that men in office received bribes, and that they did all sorts of irregular things, and yet he could not get them displaced. And, therefore, he says, “while thieves are permitted to remain in office, I look upon the seizure of books and papers as little less than highway robbery.” Thus, disgusted with all his efforts, he throws up the sponge and resigns. What we are to do now without his moral influence is beyond my comprehension; indeed, I scarcely know what we did before, or how we were able to collect any revenue at all. We went on very comfortably, however, before that time, and very little trouble occurred, but we must have had robbers without number.

Now, I wish to call the attention of the Committee especially to his statements, and I shall try to keep within the statements made by him. He said that within his experience he had had sixty-one cases, and that fifty-two of them were made by officers who had bribed somebody—fifty-two out of sixty-one—and in all instances he has presented all the facts showing this state of things to his superior officer, who may have been, in this case,

the Secretary of the Treasury, certainly not the Collector, inasmuch as he said that, for the sake of convenience, he did recognize the Collector to be his equal, although in law and in theory he was the superior of the Collector, and that his only superior was the Secretary of the Treasury. Therefore, if we are to believe him, if we believe him at all, his reports are on record in the office of the Secretary of the Treasury, in Washington, to the effect that these fifty-two men have been accepting bribes from merchants, and yet he did not tell us that one of them had been removed, although the inference may be drawn that some of them had been displaced.

Mr. KELLEY.—He said that some of the earlier cases that he referred to had removed.

Mr. SCHULTZ.—But he did not specify, and left the impression that they were all guilty. Now, I submit that on that showing the Custom House is in a bad condition. But more than this, this special agent absolutely charges that he accepted information from these gentlemen, and allowed them to turn State's evidence, and gave them a part of the moieties—rewarded them by giving them a share of the moieties. Was there ever so pitiable a condition of affairs as that? And yet these gentlemen are retained in public office. Now, gentlemen, I do not think I state the case too strongly. I would appear before you this afternoon as a defender of the present administration and of the Custom House against such charges, if their representative were not here to do it better himself. I do not believe that state of things which has been represented here exists, but if it does, you cannot too soon send a special committee to New York to find out what is going on there, and you cannot too soon change the system which entraps so many merchants, and does this great wrong not only to the merchants but to the very informers. Consider it, as it has been put by one member of this Committee, that the information obtained is good enough to “strike” a merchant with; that it is good enough to take hundreds of thousands of dollars out of the pockets of merchants; that it is good enough to bring on them disquiet and anxiety, and make them suffer all sorts of pangs, but it is not good enough to bring to punishment a man at least equally guilty with the merchant. I submit that the district attorney did not answer your question when you asked him whether he had any prosecutions against these men. Whoever heard of a man in the Custom House being prosecuted for collusion or for taking bribes, except, perhaps, by being quietly dismissed from the public service? Such things may happen occasionally, but I submit that I read the New York papers, and I have never yet seen an account of one of these men having been convicted or even prosecuted for any crime. Now, this special agent must be mistaken, and if he is mistaken in such an important matter as this, is he worth a \$100,000

a year? Is that a fair price to pay for a man who has been gathering this information for four years, and who, after all, makes so many and so dreadful mistakes? But if he is right you must reform that Custom House. It is a weight that I undertake to say you cannot carry. You must unload.

#### PAYMENTS BY MERCHANTS TO CUSTOM HOUSE OFFICERS.

I believe it is true that a great many weighmasters, and a great many employés in the public service do accept from merchants, from time to time, and from one consideration or another, certain pay, and I have been amazed at the greenness, for I can call it nothing else, of some gentlemen here in Washington, who seem to make strange of it that merchants pay for services rendered. Now, I undertake to say to you in this regard that there is not an importing merchant in the City of New York who could escape the charges made here, provided he were examined with the same strictness that has been applied to some of these firms. I say there is not a single importing house in the City of New York that has not at some time or another paid to some of these men some money for services rendered. Let us see how, and under what circumstances. I had occasion yesterday, in this room, to question one of the men of the highest moral character of this city upon this subject—I mean General Butler. No one will question his authority. “Sir,” said I, “if I should come before your Committee, and should have some business in which I required the services of one of your employés to do some extra work—copying, or something of that kind—would you allow me to pay him for it?” “Oh, yes; no difficulty about that.” “Then would you allow me, if I had a cargo on the dock and I wanted to get it in, and the storekeeper would not keep his office open after sun down, that being the regulation, and I wanted him to keep it open two or three hours longer—would you allow me in such a case to pay him for that service?” The gentleman began to see the logic of the thing, and he backed square out. It would not do for a merchant to do that in New York, but he might do it in Washington. That appeared to be his view as near as I could get at it. Now, if I were to occupy your attention until to-morrow morning I could not describe to you the varied circumstances under which we are called upon to pay money for such services—to pay it with perfect honesty on our own behalf and on behalf of the recipients. You have got a system of business which necessitates it. The employés of the Government are not always the most energetic business men in the world. I suppose I do not offend any one by saying that now. We will regard this table as a city; this city is divided into districts, and there are as many weighers as there are districts. Suppose, now, it is my misfortune to have



my cargo in a district where the man is incompetent, or is sluggish, or is not well. I want my cargo weighed promptly; how do I get it done? Why, I have got to "stimulate" him. You have been trying to justify moiety here because they "stimulate" these gentlemen to do their duty. Now, I must apply a stimulant to this man [laughter], but it is not necessary for me to bribe him. I am paying \$125 demurrage every day. Every day that the vessel lies there it costs me \$125 for demurrage; and by spending \$50 or \$75 extra I can get that cargo weighed two or three days earlier than I could otherwise. Now, this state of things, I am told, is charged against the merchants as a crime. But I could state to you varying circumstances that would occupy your attention for hours, showing how perfectly proper it is for a merchant, in order to facilitate his business, to pay men extra. Let us take a case. That "Pepper" case was a good illustration of it. Here is a weighmaster employed by the Government; there is a weighmaster belonging to the public—a city weighmaster. It may be that they are brothers, or father and son, or that they have friendly relations with each other. They have a cargo to weigh. Now, shall each of these gentlemen put his scales on the dock, in the way of the other, and stand there with his gang of men, and after one of them has got done weighing the cargo, then the other weigh it over again? That, certainly, would not be business like, but it would be according to law. But the way they do it is this: Perhaps the Custom House weigher has a good deal to do, and the merchant makes an arrangement to give him an extra return. But, in the first place, let me explain that the Custom House weighmaster, in weighing a cargo, iron, for instance, is not very particular. He throws it on to the scale, and if it is a few pounds either way it does not make much difference; he weighs it merely for the purpose of collecting the duties. Now, suppose you stipulate with this man, saying to him, "I want to get this return from you, and I want you to weigh this accurately." And suppose you pay him something extra for doing that, is that any harm? Is not the Government likely to get better justice done when the cargo is weighed accurately in that way than if it is weighed loosely, merely for the purpose of levying the duty? Such cases as this are within the experience of every merchant in New York. But this thing is not without its difficulties. Some two or three years ago a Committee of Congress came to New York and overhauled the Custom House and found this state of things, that there was not a single department in the Custom House that was not in the habit of taking pay for over work. If merchants, even the largest and best merchants in New York, wanted to get their invoices examined promptly, they had to pay some young man to take them home at night, or to work on them somewhere over night, in order to get them through.



That, however, was regarded as wrong, and it was discontinued. There was an order issued that it should not go on, and the employés of the Custom House felt very much aggrieved. I know that I had two or three young friends in the Custom House who were in the habit of making five or six hundred or even a thousand dollars a year beyond their salaries by over work, and they complained of the change, and two of them quit the Custom House for the very reason that they could not live on their salaries without this addition to them—and they were the best men that were in the Custom House, too.

Now, as to this case of Phelps, Dodge & Co. What are the facts? They have an immensely bulky business. They are carting all the time from their vessels. Somebody has got to keep the storehouse open for them, and they have got to pay for that service. Suppose it is a cargo of tin, and it is damaged by salt water—you know how readily salt water damages tin—now, this has got to be exposed and cleaned off at once. It cannot wait from Saturday to Monday; it has to be done at once. I happen to have lived in their neighborhood for about twenty-five years, and I know that their trucks are going sometimes all night. Now, suppose that firm should say, "We are very conscientious. We will not pay for extra work; and if our men won't do extra work without extra compensation, then we will quit the business." But they don't do anything of the sort. When they have business to do they do it, whether it is done by the Government men or their own men, and whenever it becomes necessary to employ extra labor they employ it, and pay for it, and when they do so they enter it upon their books. A merchant that is honest cannot afford to have a private account, and puts it right on the cash book. No man can spend a cent in a well regulated house that it does not appear on the books, and in all these cases if you were to examine, I will guarantee that you would find these expenses regularly entered on the cash account. This special agent held up to you copies from the ledger of Phelps, Dodge & Co., charging to this ship and the other ship \$5, \$10, \$15, \$20, as if that were something dreadful. There is nothing remarkable about that. I should expect to find it charged just exactly in that way in an honest house. I submit that that is no evidence—yes, it is evidence—evidence that there was no fraud intended—in the fact that the charges were put there on the books, subject to the inspection of every clerk in their employ. Do you think that Phelps, Dodge & Co., with sixty, seventy, or eighty clerks—do you suppose that any merchant can afford to put any dishonest transaction on his books, where it is subject to be known by men who are liable to expose him, not to the Government, perhaps, but to his customers? If any wrong were intended would it thus be laid before the eyes of men who might use it to the merchant's disad-

vantage whenever he did anything that the clerk thought wrong—not take him into partnership, not increase his salary, or do any one of a hundred things that clerks complain of? I think I need not do more than state this proposition. Now, I submit that there is no evidence before you produced by Mr. Jayne that any of these parties have done anything more than my own house and every house in the City of New York does. Of course the amounts paid by Phelps, Dodge & Co. would be larger than the amounts paid by others, because their business is very large and bulky, and it takes a great many men to do it, and I should be surprised if they did not have hundreds and even thousands of dollars to pay each year for extra services in this way.

Now, I want you to remember this. We have been called off here again and again, and have had a great many hypothetical cases, and a great many conundrums put to us that I cannot solve, but I wish to call the attention of the Committee to the fact that when Mr. Jayne presented himself here to defend this moiety system he told you that he was going to present the pivotal case. I was not present, but I saw his language reported, and by “the pivotal case” I take it for granted he meant the case around which all the others turn—that it was a fair “specimen brick.” Now, gentlemen, you have examined this case with care, and I am glad you have. There are no gentlemen on this continent better acquainted with the Phelps, Dodge & Co. case than you are to day; and if that is a pivotal case what do you think of the rest of them? Many of you are lawyers. I ask you whether, if you had been the advisers of that firm, with your knowledge of the law and your present knowledge of the case, you would have advised them to settle? You say no; but the lawyers that they selected did advise them to settle, and they are supposed to know the law. I have no authority for saying, and, in fact, that firm has always denied it to me, but I submit the proposition that when we get to the bottom of this whole matter—it may be years yet, but I hope it will be during the lifetime of some of us—it will turn out that a legal conspiracy—if that is not a misnomer—that a legal conspiracy has existed in the City of New York, more or less criminal, and that, as you look at the facts of this case and scrutinize them, you will see that I do not misjudge. Here were gentlemen in the law—three or four of them—who understood the law perfectly, competent to understand it as it has been presented to you, and you will wonder that they could have advised that settlement; yet they did. As the gentleman tells you, they ran around the streets at night, late and early, pleading for settlement; and consider the theatrical arrangement of the gentleman coming to the attorney’s office and saying, “Sir, I won’t come in if you go to offer me back my check; don’t you offer me

that check and then I will come in!" That is "too thin." It don't answer the ease. I do not charge that Colonel Bliss was in this conspiracy, but I do say that, with my knowledge of this case and of the counsel concerned, I cannot comprehend how they could have so persistently advised a settlement. I happen to know of some other cases where such men as William M. Evarts have been employed as counsel, and they have never advised a settlement. They have advised fight—resistance—and they have some of those cases now; and, in my judgment, they have advised wisely. In one case which I have heard of the parties insisted on settling because they settled for a mere nominal sum; but even in that case Mr. Choate told me it was contrary to his advice, against his protest, and the other parties must take the entire responsibility. You recollect what was said to us the other day by this gentleman (Mr. Jayne). He described to you the situation in the Custom House. He told you what influences were at work, and how strenuously he had served his country fifteen hours a day, and had broken down physically, mentally, and perhaps morally; but, said he, "Now we are on the home stretch." Thank God for that! I don't know but he has helped us to get around on that home stretch. I begin to feel myself that we are on the home stretch. I begin to think I see daylight, and I think it likely (I want to be generous) that he has helped us to get around to this fortunate position; because, without a strict technical enforcement of the law, we would probably have been groping around yet, as we have been for several years past. And who would have been struck? Only a few German houses, without friends; a few who could not excite public attention. But when they struck other men who had friends, that brought relief, and enlisted your sympathy, as it will that of the whole country. General Butler told me here that the people were not with us. Well, I am not a very good judge of what "the people" are doing, but I know that justice is on our side, and the people finally get on the side of justice, and I believe that General Butler is wrong. But Mr. Bliss said to you to day, very ironically, "Why don't these big merchants of New York come here and tell of their sufferings?" Now, I had heard that there were three or four merchants in New York who were standing out from this movement, saying, "We have not been struck; we are holier than you!" I went and saw one of them on the subject, and he said to me, "No, sir; I never have sympathized with this action. I think it degrading, both to the Government and to the man." "May I say so?" I asked him, and he answered "Yes." I wrote to another gentlemen who was supposed to be willing that these things should go on. I wrote to him and called his attention to "*cartoons*." In less than two hours he was in my office. "Who told you about my cartoons?" he asked. "Nobody," I said. "I

know that anybody who is engaged in that business must be affected in that way." He absented himself for four hours, and then he returned and said, in substance, "I am in up to here" (his neck); and he has been trying to make his peace with the Custom House ever since. I wish him success, and I think he is more likely to be successful than he would have been a few months ago. I come now to a case which I will mention by name. I understood that Mr. H. B. Claflin, who is my personal friend, had said, in an examination before a Congressional Committee, that he thought there was no danger for an honest man, and I understood that he had said that this committee of merchants that was going on to Washington need not undertake to represent him; and inasmuch as I was going to Washington as a member of the committee, and as I did not want to misrepresent anybody, I wrote him a polite note, saying, in substance, "If you desire to be counted out I will say so to the committee;" but at the same time I called his attention to certain circumstances and facts, which he handed over to his importing clerk, who soon told him, "Mr. Schultz and those gentlemen are right about this, and you are not exempt at all." "Do you mean to say," says Mr. Claflin, "that a single item vitiates the whole of an invoice?" "Certainly." "Oh, that cannot be." "Well, if it is true, what then?" "Well, you go down and tell Schultz to represent me, too." [Laughter.] Now, I say this: that whenever I am challenged to apply these tests I will apply them, be the consequences what they may. When one man sets himself up to be better and holier than his neighbor, he must have some reasons for the faith that is in him. We say that the law is bad; we say that no man, however honest his purpose, can escape: and so believing, we say that when a man undertakes to stand up and brave what he calls public opinion, and says that he is not affected, we will ask him to account for his good fortune. A word about public opinion: I don't know that I am a good judge of public opinion, but if I do not mistake, you will have no doubt on that subject in less than thirty days. If public sentiment is what you want, we will go home and ask our constituents (and they constitute the entire merchants of New York); we will ask them what they think of this law. According to the district attorney, the public press does not amount to much as an exponent of public opinion, for some influence is at work writing all these expressions of opinion which appear in the papers, but we will take some means of discovering what public opinion really is on this point. You prescribe the test for us—we do not care what it is—and if we do not show you that public sentiment, independent and irrespective of all party lines and considerations, is in our favor on this question, then we will yield the whole thing.

Mr. W. M. E. DODGE again appeared before the Committee, and was examined as follows:

Mr. WOOD.—You mentioned, Mr. Dodge, in reply to Mr. Foster, the name of another member of Congress, besides General Butler, who was in New York at the time of your settlement—Senator Conkling. Will you please state whether, in your opinion he was there as counsel, or in any capacity from which he derived any pecuniary compensation or benefit, or in what way you suppose he was there.

Mr. DODGE.—I never had the most distant idea that he was there professionally, but I believe he happened to be in New York at the time that this thing was in process of settlement, and was in council with some of the other gentlemen there, particularly I believe with reference to the position then occupied by Mr. Laffin. I have never mentioned his name before in the matter. My own impressions were that he had no pecuniary interest in it in any way. I have always looked upon it as a mere accidental visit on his part to the city. Still the fact that he was there in connection with the other gentlemen showed what an array there was against us.



STATEMENT OF HON. NOAH DAVIS, IN REFERENCE TO HIS  
CONNECTION AS U. S. DISTRICT ATTORNEY WITH THE  
CASE OF PHELPS, DODGE & CO.

The connection of Hon. Noah Davis with the case of Phelps, Dodge & Co., and his proceedings in relation to the same as U. S. District Attorney (an office which he then filled), having been reviewed by his successor (Mr. Bliss) in his speech before the Committee, March 12th, in a somewhat critical and disparaging manner, Judge Davis on the 19th of March, subsequent, appeared before the Committee, and submitted the following statement :

“What I say now, Mr. Chairman, will relate particularly to my connection with the Phelps, Dodge & Co. case, and I shall make it as brief as possible. That case arose eight or ten days before the expiration of my term of office as United States Attorney for the Southern District of New York. I had sent forward my resignation, to take effect on the 1st of January, 1873, having been elected one of the Judges of the State Supreme Court, and my judicial term of office commencing on the 1st of January, 1873. I was very much engaged in the effort to close up my business, both official and professional, so far as I could, before leaving that office and before entering on the other, which, by the constitution of the State, would preclude me from doing any business as a counsellor or attorney in any of



the courts of the State. My first knowledge of the Phelps, Dodge & Co. case was this : I received, about eleven o'clock in the morning, a note from Mr. Laffin, the naval officer at New York, which was brought to me by a messenger, who came with a carriage, asking me to drop any business I had on hand and come immediately to the Custom House with that messenger in the carriage, the note saying that my advice was desired in a case, the most important that had ever arisen in the district. That is substantially the language of the letter. I did as requested ; I went to the Custom House in the carriage which had been sent. I found in Mr. Jayne's room Mr. Laffin, Mr. Cornell, the surveyor, and Mr. Jayne. Mr. Laffin said to me that they had sent for me to advise in a case which had been under investigation by Mr. Jayne, against Phelps, Dodge & Co.; that they wanted, before taking any further steps, my advice whether or not the investigation by Mr. Jayne disclosed facts which would justify further proceedings. I went into an examination, Mr. Jayne producing a lot of Custom House invoices, in respect to which the alleged frauds were claimed to have been committed, and certain papers, which he called duplicate invoices, which had been furnished to him, as he said, by some clerk who had previously been in the employment of Phelps, Dodge & Co. He also presented me with an affidavit made by that person—an affidavit which I have never since seen, and of the contents of which I have only a general recollection. The substance of it was, according to my recollection, that that firm had been in the habit, for a long period of time, of receiving duplicate invoices, one of which varied from the other ; that he had had charge of them, and he said, if I recollect aright, that he had been instructed to take those invoices and destroy them, and that, instead of doing so, he had kept them, and that they were, or some portion of them were, furnished by him to the Government officer. I looked through the papers that were there with a good deal of care. Mr. Jayne showed them to me, and pointed out the alleged discrepancies in several entries, in respect to which he claimed that frauds had been discovered. After spending much time in looking at them and seeing their general character, I told the officers that were present that it was quite apparent that the law had been violated by that firm in making the entries of those goods at the valuation put upon them by themselves, instead of making their invoices so as to show the actual cost—the purchase price—which the law required, and that, in my judgment, it was a case which would justify them in pursuing the investigation.

“ It was then suggested by Mr. Jayne that a warrant should be immediately obtained, and the papers and books of the house seized. I told him that, so far as that was concerned, I was willing that only this course



should be pursued : that they might prepare the papers for the application for a warrant and bring them the next morning to my office, to myself personally, and that I would take them and go to the Judge personally and make the application for a warrant, and that if a warrant was granted I would keep the control of it, coming to the Custom House in the morning with it and with a deputy marshal ; and that the collector or some other of those gentlemen should send to Messrs. Phelps, Dodge & Co., and request the members of that firm, or some of them, to come to the Custom House, so that I could have an interview with them. It had got quite late at this time ; it was after five o'clock in the afternoon, and the business offices were all closed. Mr. Jayne was extremely anxious that the warrant should be in condition for immediate service, because he said that he was so far satisfied in his own mind that fraud had been committed that if the house got information that a warrant was out, the books and papers might be destroyed or put out of the way, and I told him that, to guard against that, the warrant could be there present at the time of the interview, and if the firm was not willing to permit a full inspection of their books and papers, the warrant could be ready for service as expeditiously as those gentlemen, or any of them, could go back to their business house for the purpose which he feared.

“ Mr. Jayne came up the next morning with the papers prepared and sworn to. They were incorrect—not complying as I thought with the statute—and I made alterations on them and required them to be resworn to, and I then went before the Judge, not letting any of the assistants in my office know that such an application was pending. My custom had been when those papers came to me, after looking over them myself, to ask one of my assistants to take them before the Judge and apply for a warrant upon them. This was the only case, to my recollection, in which I had ever applied for a warrant personally. I went with the papers to the Judge, who examined them and granted the warrant, and delivered it to me. I then requested a deputy marshal to go down with me to the Custom House. We went there and Messrs. Phelps and Dodge were sent for. The elder Mr. Dodge, the senior of the firm, and Mr. James, a member of the firm whom I had never met before, came there together. We saw them in the ante-room of Mr. Jayne's office. Mr. Jayne and myself, Mr. Dodge and Mr. James being present. I stated to Mr. Dodge what proceedings were pending ; that an investigation had been had into their invoices ; and that I had been called down there the day before, and had said to the officers that, in my opinion, it was a case which justified further investigation ; that I had requested of them, before any further steps were taken against the firm, that the members of the firm should be sent for, and

that I should have an opportunity to have an interview with them. I told them the nature of the charges. These gentlemen were very much surprised. The elder gentleman, Mr. Dodge, did most of the talking. He expressed great astonishment that anything of that kind should be alleged against his house, and protested his entire innocence and want of knowledge that anything of the kind had ever occurred, and declared his readiness to pay any duties which the Government had lost by reason of any errors, mistakes, or oversights of his firm, and also to pay any penalties that might have been incurred. Mr. James also made a like protest as to his entire innocence and ignorance of what was alleged. They wanted to know the particular grounds of the charges. Jayne got the statute and pointed out the law, and told them the consequences of its violation. He took the oath made at the Custom House by owners, and showed them wherein the oath which a person in their house had been accustomed to make had varied from the oath required by the regulations as the owners' oath. I told Mr. Dodge, in the course of the conversation, that a further examination of his books and papers would be required, and that a warrant had been issued, which I should withhold in case they were willing that the examination should be made without any service of the warrant. Mr. Dodge at once expressed in the fullest terms his entire willingness to have his books and papers examined, saying that everything in that establishment was at the service of the Government. I then said to him that there would be no occasion for the service of the warrant; that I should take the warrant back to my office and withhold it; that Mr. Jayne would accompany him to his store, and that they could deliver to him, Mr. Jayne, such books and papers as he wanted. They expressed themselves satisfied with that arrangement. Jayne and one or two officers went with him to the store and I returned to my office.

In relation to what occurred there I feel bound to say that, while I was present, there were no threats except what might be implied by the exhibition of the statute and the pointing out of the penalties which Jayne insisted, with a vehemence natural to him, they had subjected themselves to, saying that they had forfeited a very large amount, stating it, in round numbers, at over a million of dollars; and stating, also, that, in taking the oath they had subjected themselves to the penalties of perjury. Beyond that there were no threats or terrorism (if that word has any particular signification) used, to my knowledge; but in a late conversation with Mr. Dodge (it is but justice to him that I should say something more in regard to what he said on that subject) he has stated to me that he had an interview the next day with Mr. Jayne, when I was not present, and that he had probably mingled in his statement here, what was said at the two

interviews ; but, on that occasion I have stated substantially all that occurred while I was present.

I went back to my office. I was, of course, very much engrossed in business. I heard nothing more of these proceedings, except that a young man who is in Mr. Jayne's employment came into my office once or twice, according to my recollection, and said that Mr. Jayne was making discoveries beyond what he had expected. I heard nothing during the interval up to the 30th of December except that, and I saw none of those parties to converse with in reference to the case.

On the 30th December, in the afternoon, a message came for me, inviting me to go to the Astor House, to Mr. Jayne's rooms. Mr. Jayne was living at the Astor House with his family, occupying rooms there. I went to the Astor House and found Mr. Jayne, Mr. Wakeman, and Mr. Knox, of the firm of Fullerton & Knox. These gentlemen were together in the room. Mr. Jayne stated to me that I had been sent for with a view to see in what manner the case could be closed up without delay. He stated to me that a proposition had been made to compromise the case at a sum which he named, which was considerably less than two hundred thousand dollars. I think, if my recollection serves me, that it was about \$150,000, but the precise figures I have not in my mind. He said that that proposition had been made, and that he had resolved not to accept it, as it was not enough. I then asked him to show me the papers, as he had made up the case from his examination. He showed me the papers, saying that he had discovered, and, as he said, substantially proved, that those entries had been made in respect to invoices amounting to over a million dollars. He had not then the amount of the items that were especially affected by the frauds, but the aggregate amount of the invoices in which those items were contained. He showed to me, or repeated to me, substantially, his statement of what was contained in letters and in papers which he called duplicate invoices, though I did not see them, and was under the impression at the time that they were, in fact, actual duplicates of the invoices entered. Those which I had seen the day I was at the Custom House were, in their general character, not exactly duplicate invoices, but they were, in a great degree, letterpress copies containing items, and accompanied by notes showing that the goods were purchased under such and such contract, or something to that effect.

I looked into these papers sufficiently to see that my impression that there had been a violation of the statute was well founded, and I said to these gentlemen, the counsel who were there, and Mr. Jayne, in substance, that the only way in which this case can be settled at once, without referring it to Washington in order to have the approval of the Secretary of the

Treasury, will be for the collector to adopt, what has been heretofore adopted, as I understand, at the Custom House, one of two modes. One is to select certain invoices equal to the amount that may be agreed upon as the compromise, and direct a suit for the entire amount of those invoices. The other course, which has been adopted, as I understand, in one or two instances, is to select from all the invoices the items specially affected by the alleged fraud, and make the value of those items the basis of the compromise. Mr. Jayne said that course had been pursued by the collectors in several instances. Mr. Jayne was then requested to go through with the invoices and select those items and see what they would amount to. This suggestion was made not by me, but by the counsel who were present representing the firm of Phelps, Dodge & Co. Mr. Jayne sat down by the table and I sat down, looking casually through the papers in the room. Mr. Jayne went through the various items and reported that the approximate aggregate amount was \$260,000. While Jayne was making the computation the other gentlemen had retired to a room in which I understood Mr. James and Mr. Dodge were, although I did not see them at all on that occasion. Jayne made out an aggregate sum of two hundred and sixty thousand dollars and stated it to me. I said to him, "Mr. Jayne, they never will pay any such sum." "Well," said he, "you will see that they will." The gentlemen were sent for and requested to come in. They came into the room, took the papers from Mr. Jayne, looked over them, and very soon went out of the room again, going, as I supposed, to see their principals. They returned in a few minutes, saying, "We will consent to pay this \$260,000." I was then requested to go to my office (it had got to be quite late in the afternoon) and to remain there at least an hour, they saying that they would go to the collector and obtain a letter directing me to commence a suit for \$260,000. They wanted me to remain at the office, so that if they came there with such a letter I could issue a *capias*, and Mr. Wakeman could indorse his appearance at once and deliver a check for the amount—in substance giving a *cognovit* for judgment, so that the matter should be closed up the first thing next morning. I went to my office and waited there for an hour. I should add, however, that it was said to me that if, by any accident, they could not find the collector at his office, I should therefore take a *capias* to my house, and that in the course of the evening, if I were not in the office when they got there, they would come to my house with the check and indorse the appearance on the *capias* in the same manner. I waited at the office about an hour. It grew quite dark, and, as they did not come, I looked up a *capias* and went to my house. I heard nothing from them that night. The next morning I went down to my office. I had an appointment with Mr. Bliss, to be there at 10 or 10½

o'clock, for the purpose of putting him in possession of the facts in a number of cases then pending in the calendar ready for trial, and into which he would come on the opening of the court the following week. He came there at about the appointed time. After we went through those cases, spending two hours at least in going through the various cases, and in my advising as to the facts and points of law on which the cases depended, (they were all Government cases), and while I was sitting there with him explaining these matters, a note from Mr. Jayne was brought to me by a messenger. I looked at the note and told the messenger that I would come down presently, and then I went through the business with Mr. Bliss. When I got through the business with Mr. Bliss I said to him, "I am now going to the Custom House, I suppose, to close up the heaviest case that has ever arisen in this district. The terms of the settlement were arranged last evening, and I supposed that under the arrangement the matter would have been closed up last night, but it has not been done." Now, I said to him, "Mr. Bliss, I do not wish you to be under the impression that I have neglected business which I ought to have attended to in this office, just as I am going out for the purpose of hurrying through a matter that would give me a heavy fee, and I suggest this to you: that you go down with me to the Custom House; and that we both participate in closing up the matter and that you take half the fee." He seemed to be very much surprised when I made this proposition to him. He started out of his chair, walked to the mantelpiece, stood there a moment, and turned to me and said: "Judge, since you have made that proposition I feel bound to say to you that that case is not going to be closed to-day. I learned last night all that had been done at the Astor House. I was with the collector at his home till a late hour. They have been dealing double with you. Somebody, I will not say who, has been carrying water on both shoulders. It is of no use for me to go down with you, and I think I will not go." I understood, at once, of course, what had transpired. He said no more to me on the subject, and shortly after left, and I went very soon to the Custom House. On inquiring, I was told that the Custom House officers, the collector and others, were in a private room, I think connected with the naval office. I went there and found the collector, the surveyor, the naval officer, Mr. Jayne and another person in the room. Mr. Jayne said to me when I came, "Judge, we have sent for you to inquire——"

Mr. DAWES.—Do you recollect who that other person was?

Mr. DAVIS.—I do not think I ought to name him, except to say that it was not the person whom you possibly suppose it was. It was not Mr. Butler. It was a gentleman who, I presume, had no connection with the case. I have no personal reasons for not naming him.



Mr. DAWES.—I had no reason for intimating in the inquiry which I made that I supposed it was General Butler.

Mr. DAVIS.—I suppose not; however, it was not General Butler. It was a gentleman who was, I suppose, present by accident, and whose name has not been mentioned in this matter, to my knowledge. I presume that he had no connection with the case.\*

Mr. Jayne told me that they wanted information as to what had been the ruling of the courts under the statute of 1863 in regard to the consequences of the violation of the statute—whether it affected the whole invoice or whether a portion of the invoice only, as to which frauds were alleged, could be treated as forfeited. This is the substance of the question which he suggested. I said to these officers then present, "Gentlemen, I am willing to give you any advice that you may think proper to call on me for, but with this understanding, I want to be distinctly understood, before I say a word more about this case, that I will not have any connection with any fee. The fee is to go entirely to my successor, whether the case is settled to-day or hereafter. I will have nothing to do with that." I then said, "Now I will answer your question, so far as I understand the decisions. They are to the effect that the entire invoice is to be treated as forfeited, although I have understood that a decision has been made by Judge Clifford, in some case in Maine (an opinion which I have never seen), that the forfeiture may be treated as limited to the articles actually affected." I recollect that I went on further to say that, in my judgment, that would be the common law construction of the statute.

Mr. DAWES.—What would be the common law construction?

Mr. DAVIS.—The common law construction would be, in the milder sense, in case of doubt applying it to the forfeiture of the things actually affected; but that the construction which the judges have always given to the revenue law was that it was to be more strictly construed for the benefit of the revenue.

I recollect that I referred to the Cliquot wine cases, in which the court discussed the question as to the proper construction to be given. I said to those gentlemen also, "Now, feeling myself entirely disembarassed of all interest in regard to fees in this case, I will also say to you that those gentlemen (the counsel for Phelps, Dodge & Co., whom I had seen in passing below) are extremely anxious, as it seems, to have this matter com-

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\* Reference, contrary to Judge Davis' supposition, had been previously made during the hearing to the circumstance that Roscoe Conkling, a Senator of the United States from the State of New York, was present at one or more of the conferences of the Custom House officials in reference to the settlement of the case of Phelps, Dodge & Co.



promised on the terms proposed, and I want to say to you gentlemen, who are interested in this question, that in my judgment, if you are governed by your own interests, you had better accept the sum offered, for no jury on earth will ever give a verdict in this case for any such sum or for a tithe of it, and probably no jury will ever give a verdict in the case favorable to the Government unless on special direction of the court," and I gave my reasons for that opinion. On my way out I saw the counsel for Phelps, Dodge & Co., Mr. Wakeman and Mr. Knox, and I said to them, "Gentlemen, your case is not going to be settled to-day." "Not settled!" said Mr. Wakeman, "I think it is." "Certainly it is not," I said. They persisted in wanting to know why, and I told them there had been some hitch in the matter about the fees of the district attorney; but that I had seen those gentlemen and had told them that I would have nothing whatever to do with the fees, and therefore supposed that I had removed that obstacle, if it was one. I said, "If you can induce them to accept your offer of compromise, well and good. I have nothing to do with the fees." Mr. Wakeman said that that was a very great injustice toward me, and that it should not occur; that the case was going to be settled, and that I should have the fee. I said, "I have nothing more to do with the matter, and shall have no fee in the case." He said, "You shall have a fee in the case, even if we have to pay it ourselves. We would rather pay a double fee than to have you, after the connection you have had with the case, treated in that manner." I said, "No, nobody is under any obligations to pay me any fee." I went to my office and heard nothing more of the case until I heard subsequently to the 2d of January (the 1st of January being a holiday), that a letter had been sent to the district attorney to commence a suit for a million of dollars, and that an offer of compromise had been sent in to pay \$260,000. I went to my judicial duties after the 1st of January, and had nothing more to do with the case. I saw neither of the counsel nor any one else connected with it until some days afterward; Mr. Dodge came to my house desiring to talk with me about the case. I said to him, "Mr. Dodge, you know that my relations to the case have been those of attorney for the Government, and of course I can give you no advice, as counsel, and can say nothing about it in any professional capacity at all." But after he had talked the matter over very freely, giving me his version of the case, and stating the facts as he claimed them to be, I said to him, "Mr. Dodge, while, as I told you, I cannot give you any advice as counsel, I will say this to you, precisely as I would if you were my own brother, that I think you ought not to pay one cent in this case, and in justice to yourself and your house you ought to fight it out to the end." He then gave me his reasons for going on with the settlement.

That ends my connection with the case almost entirely. I do not recollect hearing anything more of any consequence about it until I was requested by Mr. Dodge, after the settlement had been made, to write a letter, which letter I wrote and it was published. I have omitted, however, to state one thing, and that is, that in the examination of the papers at the Astor House, I asked Mr. Jayne if he could show me how much had actually been lost to the Government by reason of these violations of the law. He said that he could, and he figured it out, and said that it was sixteen hundred and odd dollars. I said to him that I was surprised that the amount should turn out to be so small, and that it seemed to me that the Government would have the greatest difficulty, if those gentlemen choose to contest the case, to recover, before a jury, under those charges, unless the court should direct the verdict for the violations of the statute; and that was one ground on which I said to the gentlemen at the Custom House that in my judgment no jury would give a verdict in the case.

I wish to add that I have on no occasion, except the one which I have mentioned to you, had any conversation whatever with Mr. Bliss about the case, and I never made any suggestion or intimation about the fee to him, except as I have stated here. I made no allusion to *his* fee, and I had no idea at the time that the conversation occurred in my office when I suggested to him to go down with me to the Custom House and participate in closing up the case (which I supposed would be done) and take half the fee, that he knew anything about the settlement of the case. How Mr. Bliss can believe (as I judge he does, from what he stated to this Committee) that I had proposed that I should share *his* fee with him, is very surprising to me. He may possibly justify himself, from the fact (a fact which I learned after that interview, but not till the next day) that he had that morning, before coming into my room, gone to the Judge, whether in his private room or in the court room I am not advised, and taken the official oath, which fact Mr. Bliss did not mention to me, nor had I the least idea of it. The custom has always been in that office for the outgoing incumbent to take the commission sent to the new appointee and present it to the court, introducing his successor, and move that the oath be administered to him. That was done in my case by Judge Pierrepont, and I am told that it has been done in the cases of my predecessors; but in this case, as I have stated, I am informed that Mr. Bliss went in the morning, before I came to the office, and took the oath. He made no mention of it, however, to me, and no conversation was ever at any time had between us in reference to his taking or delaying to take the office, till the first of January, when my resignation was to take effect. I went through with all the duties and all the business of that day without the slightest intimation or idea that any-

body else was the officer, either *de jure* or *de facto*. I never dreamed of it and it has been suggested to me that Mr. Bliss gets the idea that I offered to share *his* fee from the fact that he had taken the oath in that manner before he came to see me.

You will have seen, of course, from this statement that all the knowledge I had of the Phelps, Dodge & Co. case, while I was district attorney, was predicated on the affidavit of this clerk of theirs (about whom I know nothing; I had never heard of the person before; but it turns out that he was an individual whose credibility would have been greatly shaken before a jury). The papers in the Custom House, and those which were exhibited by Mr. Jayne at the time of the statement made to me by Mr. Jayne at the Astor House, I had never seen, and did not know that, in point of fact, the error in their case was of a character which ran through all similar entries, and that the valuation of the goods had operated in other cases in such a manner that the price stated in the invoice was much larger than the actual cost, and in such cases had produced a probable over payment of duties. But, before I wrote my letter, these facts were laid before me. It appeared in substance, as I understood it then and as I still understand it, that goods had been purchased on long contracts, some of them in Wales, to be delivered in Liverpool at stipulated prices, covering the whole period of the contract; but that the foreign house of Phelps, Dodge & Co., as those goods were shipped, had adopted and entered in the invoices the market valuation at the time of shipment instead of stating the actual cost, and that the effect of doing so had been, in those instances in which a forfeiture was claimed, that they had stated a valuation less than the actual cost, while in the great bulk of the business of that character the market valuation as invoiced was very considerably more than the actual cost; so that, in carrying out the principle of valuation they adopted, the result was, taking the whole course of business into account, that the Government received, on the valuations adopted by them, a far greater amount of duties than it would have received on the actual cost of the goods. Now, as I understand the law, they were bound to state in their invoices the actual cost, and they were bound also, if the actual cost did not equal the market value, to add to it so as to make it market value.

The CHAIRMAN.—They were to add it in the entry so as to make up the market value?

Mr. DAVIS.—Yes, they were to do so when they came to make the entry; otherwise, if the appraiser found that the price stated in the invoice was 10 per cent. less than the actual value, he would be at liberty to add that 10 per cent., and to add the penalty of 20 per cent. besides.

Mr. BURCHARD.—Is not that the extent of the penalty?

Mr. DAVIS.—That is the extent of the penalty that the appraiser can add.

Mr. BURCHARD.—If they make no addition to the actual cost, so as to make market value, is there any other penalty?

Mr. DAVIS.—Perhaps that may be said to be so in a case where the law requires the market value to be stated; but in cases of goods purchased, the law requires the cost to be stated. Now, in these cases they must make market value by making an addition to the cost value; and they are subject to the penalty of 20 per cent. if they do not do so, and if the appraiser finds that the price stated is 10 per cent. below market value. Now, practically, these gentlemen are right in saying that they have paid more than they would have paid if they had put in their goods always at cost, because the ordinary rule at the appraiser's office, in the great bulk of cases, is, that the invoice cost is generally taken as the market value; especially is it so taken unless the advance exceeds 10 per cent. Now, the difficulty in these cases wherein these gentlemen have violated the law occurs right here. A merchant who buys his goods and enters them as his own is bound to state the actual cost upon his invoices; yet the statute provides that if there is an advance in value that advance must be added to make the basis of duty. The duties in all cases are leviable on the actual market value at the time of shipment, as I understand the law; and so, where the goods have cost a certain price, if the actual value at the time of the shipment be a higher price, that higher price is the basis of the duty, and the law enjoins that the invoice shall state the actual cost, and it provides that while the advance shall be added to get at the assessable value, yet in case the goods have depreciated so that the market value is less than cost, the actually stated cost shall be taken as the basis of duties, and the merchant gets no advantage in reduction of duties from the fall of prices.

I would now, while I think of it, like to suggest to the Committee whether it would not be just and right that that law should be changed. These gentlemen in these different cases have entered their goods, in some instances taking the market value at a little less than the cost, because the market value had dropped. But the law requires them to state the cost, and requires that the duty shall be levied on that cost, although the actual market value is less. And there is precisely the point in which these parties did an act which subjected them to the consequences of violating the law, because it was a violation of the law to enter goods at a market value which was below the actual cost when the statute required that the cost should be given in the invoice, and that such cost should be the basis of duty.

Mr. BURCHARD.—I understand that they claim that the invoices were the actual cost, and that the memoranda were memoranda of the market price.

Mr. DAVIS.—No, sir; the other way. The invoices stated the actual market value. They conformed to the spirit of the law, which is to give actual market value as the basis. But this statute, which requires the cost to be stated, puts the merchant in this position: For instance, Phelps, Dodge & Co. have contracts for tin made on the 1st of January at a specific price; that tin is deliverable in Liverpool as fast as manufactured; there comes an invoice of it from Wales to Liverpool on the 1st of July at the cost which was agreed to be paid in January; they are bound to enter *that cost* price in their invoices instead of the market value on the 1st of July. Now, the same tin may have fallen off in value so that a competitor in the same market can buy it on the 1st of July at 50 per cent. less than Phelps, Dodge & Co. have contracted to pay for it. That competitor sends his goods on by the same ship which brings the goods of Phelps, Dodge & Co. The latter are bound by law to enter their goods at the cost price, and are bound to pay duties on that price; while the other merchant, who is bound by the same law to enter his at cost, enters them at a cost of 50 per cent. less than Phelps, Dodge & Co. And thus Phelps, Dodge & Co. are obliged to come into the market and compete with a man who ships his tin at the same time, and pays 50 per cent. less for it, and gets his duties estimated on 50 per cent. less value than Phelps, Dodge & Co. can have theirs. Now, that operates with great hardship at times on merchants, and it seems to me that that provision of the statute ought to be abrogated. As I understand the statute, it is a mistake to suppose that where the party has stated in his invoice actual cost, he can, at any time afterward, change it. The law says he must do it at the time of the entry.

Mr. SHELDON.—What would you make the basis of duties.

Mr. DAVIS.—The only true, sensible basis is market value at the time of shipment when the duties are *ad valorem*: otherwise the man who buys his goods ten days before another man, yet ships them by the same vessel, may find a competitor when he reaches New York, who, from the market having fallen within those ten days, can undersell him, say 20 per cent., because of the less duty which the latter has to pay. These gentlemen, in my judgment, were led into the error which they committed (and which was a plain, palpable violation of the statute) by the idea which their foreign correspondent had, which they did not know enough of the law to be able to correct; and probably also by the suggestion of the consul in Liverpool that if they gave the actual market value they were doing what



the law required. They *were* doing what justice and equity required, but they were plainly violating the statute. Now, a good deal has been said upon the point that if these gentlemen were not guilty of actual fraud they were not liable to a penalty. It does not follow at all that there must be actual intentional fraud proved under our revenue laws in order to make out a case of forfeiture. It is only required that a man shall knowingly do the forbidden act. If he knows when he does the forbidden act that he is doing that act, the law attaches the penalty. This may be illustrated by the law relating to usury. A man, for instance, comes into our State from Illinois, lends \$1,000, and draws a note by which the borrower agrees to pay him 10 per cent.—as he may properly do in Illinois. He has no intention whatever to violate the statutes of New York, yet he does violate it, and the penalty attaches because he knew when he drew the note, reserving 10 per cent., that he did that act.

Mr. WOOD.—Although he did not know the penalties for usury in New York?

Mr. DAVIS.—Yes. The law assumes that every man knows the law and the penalties it imposes for any act which he knowingly does, whether the man does know it or not.

Mr. NIBLACK.—That is the best illustration of the case that we have had.

Mr. DAVIS.—In reading Mr. Bliss's statement, I find that he refers to a case where he says two verdicts had been obtained against a house in New York for \$102,000, and that the Secretary of the Treasury remitted the whole sum. Mr. Bliss is mistaken in the facts of the case. That was a case that was disposed of in my term. The case came on for trial before Judge Blatchford. It was on the calendar and was moved. The defendants struggled to postpone it, but the Judge, on hearing the argument on both sides (I was not present, but it was tried by my assistant), refused to postpone the case. Thereupon the defendants' counsel retired and left the case to go by default. The case was tried then in the nature of an inquest, without any opposition from the other side. Judge Blatchford sent it to the jury, there being nobody to say anything for the defendants in the case; but the jury disagreed, and would not give a verdict for the Government. That case came on trial again two weeks afterward, and then the defendants appeared with very able counsel, and I went in and tried the case myself—the trial occupying about a week.

Mr. DAWES.—Was the default taken off?

Mr. DAVIS.—No objection was made to their coming in. We treated it as though the case had never been before a jury at all. We tried the case very thoroughly. It was contested on the other side by a very able lawyer, much superior to myself, and when the case rested, the jury was



ready to beat the Government beyond any doubt; but I moved for a direction on the part of the Judge, on the legal proposition that those parties had done the acts knowingly, by means of invoices which were not true, and must take the consequences of violating the law, unless the Secretary of the Treasury saw fit to relieve them.

The Judge held that the proposition was sound, and he directed a verdict on my motion, after hearing argument. That was the case which the Secretary remitted, and in which he did entirely right. The remission took place after I left office, but I was entirely satisfied that it was a most proper thing to be done, because, while these gentlemen had rendered themselves obnoxious to the penalties of the statutes, they had never intended to defraud the Government. That was the case which Mr. Bliss described as a case in which, after two verdicts by a jury, the Secretary remitted the penalty. There was no verdict of a jury, in the sense in which he applied that term, because the verdict was directed by the Judge. Now, on that subject I would like to make a suggestion, which is, that in reference to that class of cases, if the law is to stand as it now is, or substantially as it now is, there ought to be a provision of law to this effect, that in all cases tried before a court and jury, on a question of alleged fraud upon the revenue, it shall be the duty of the court to submit to the jury as a distinct proposition: Were the parties guilty of actual intent to defraud the Government? And if the jury find in such a case that the parties were so guilty, there should be no power of remission whatever; but when it is found that there was actual intent to defraud, the penalty should be enforced by way of example. This rule should apply to all cases where the Judge feels bound to direct a verdict under the law (as in the case which I have just alluded to), where the Judge should say to the jury, when directing the verdict, "Gentlemen, I am obliged, as a question of law, to say that the statute has been violated, and that there must be a verdict for the Government; yet you are to retire and determine the question of actual fraud." If the jury in the case I spoke of had been so charged it never would have found the parties guilty.

The CHAIRMAN.—Would not the insertion after the word "knowingly," in the statute, of the words "with intent to defraud the revenues," cover the case?

Mr. DAVIS.—Perhaps it would, but it will be open to question. If, however, you provide that on the trial of such cases, the Judge shall submit the question of actual fraud to the jury, even in cases where he is bound to direct a verdict for the Government, you will save the whole thing. Then if the jury find that there was fraud, the Secretary should have no power over the case, because then he would be reviewing the verdict of a jury.

Mr. BECK.—In the case to which you have just referred, in which the Judge directed the jury to find a verdict for the United States, did he also direct the jury to pass on the question of actual fraud?

Mr. DAVIS.—No, sir; not at all. I said that if the Judge had done so in that case, the verdict would have been different. The courts are bound, in enforcing statutes, to order verdicts in cases where the parties knowingly do the acts which are a violation of the statute. We have just had a case in our own State of that kind. A poor man who was entirely out of employment had a friend who had been appointed inspector of elections. Our statute provides that if any person, not being an inspector of elections, shall put into a ballot box any vote or votes, he shall be guilty of felony. Now the man who was actually appointed inspector thought that he could help his friend by having him do the duty and receive the compensation. He went to a lawyer, who drew a power of attorney providing that, in the name of this first party, the second party should go and act as inspector and perform all the duties of that office.

The man went and attended to the duty, acting fairly enough, and nobody found any fault with him until about the middle of the afternoon. He had acted so well, it seems, that the chairman of the judges of election, when he went to dinner, appointed him temporary chairman. Then somebody who came to the polls said he was not the man who was appointed inspector; the police officer immediately arrested him. The man said, "I know that that is not my real name, but I am acting under a power of attorney." This man was indicted for felony, and the Judge submitted to the jury simply the question whether he did the act of putting in ballots, and whether he knew he was doing the act. Of course, the jury found that the man was guilty. The case went to the General Term, and the General Term was obliged to affirm the decision below. But we all united in asking the Governor to pardon him, which the Governor immediately did. That illustrates the position in which the courts are sometimes put in regard to the enforcement of statutes. For that reason I have made the suggestion, to ameliorate the hardships of the case, that where a Judge is bound to direct a verdict, because the act forbidden has been knowingly done by the party without his knowing or considering the law and its consequences, and is yet a plain violation of a revenue statute, the court shall also submit the question of guilty intent to defraud.

The CHAIRMAN.—Have you concluded your statement?

Mr. DAVIS.—With this exception: I should like to say, in reference to the Phelps, Dodge & Co. case, that I have never, either directly or indirectly, in any form or manner whatever, received one penny of fee from any human being. I should not have alluded to what the counsel for Phelps, Dodge &

Co. said to me in regard to the fee, if I had not seen that Mr. Bliss said that some such suggestion was made to him—that a fee should be paid to me in addition to one to him. I have also this to say, that on two or three occasions after that, Mr. Knox, who treated the matter with the utmost fairness and kindness toward me, said to me, without speaking of it directly, “We expect to carry out that suggestion of ours,” or something to that effect. But a few days after I made my statement in the letter which has been published, I met Mr. Dodge on the cars—it was the first time I had met him after the settlement was completed—and I asked him whether any arrangement of that kind had been made, or whether any money had been paid to his counsel with any such view, and he said “No.” I then told him that, from what had been said, I had got an impression that possibly something might have been paid into the hands of his counsel with such a view, but I wanted him to understand distinctly that, under no circumstances, should I receive anything. I desire to say that, because the impression has been thrown out that I have been animated in what I have done, especially in writing that letter, which seems to have given offence, and in which I stated that, in my judgment, Phelps, Dodge & Co. had not been guilty of actual fraud, by the loss of the fee.

On the subsequent day (March 20th), in reappearing before the Committee to discuss the subject of moieties in general, Judge Davis prefaced his remarks with the following additional statement:

I do not know that I said yesterday, but I would like to say now, that, at the first meeting at Jayne’s office, of which I spoke, Mr. Dodge declared his readiness to pay any duties which the Government had lost by reason of any errors, or mistakes, or oversights of his firm, and also any penalties that might have been incurred. He made that proposition, and it is due to him to say that on that occasion he was under very great agitation and excitement, this thing coming upon him, as he described it himself, like a thunderbolt.

On the completion of his remarks on the subject of moieties Judge Davis was further examined by the Committee in respect to Messrs. Phelps, Dodge & Co.’s matters as follows:

Mr. DAWES.—As there is some difference between your statement and that of Mr. Bliss, I desire you to be a little particular in the matter. Can you tell me about the date of your first knowledge of the Phelps, Dodge & Co. case?

Mr. DAVIS.—I told you yesterday it was eight or ten days before the close of my term. I cannot give the date any more definitely; yet there is one mode of fixing the exact date, and that is the date of the warrant, for my attention was called to the matter the day before the date of that warrant.

Mr. DAWES.—What day of the month was it that you had the interview with Mr. Bliss?

Mr. DAVIS.—The 31st of December.

Mr. DAWES.—What time of the day had you that interview?

Mr. DAVIS.—The interview, I think, was from a little past 10 o'clock to a little past 12 o'clock. I am not very definite. Mr. Bliss was to be there at 10 o'clock, and he came a little after that time.

Mr. DAWES.—You have stated that you had not any knowledge at that time that Mr. Bliss had qualified as district attorney?

Mr. DAVIS.—I had not the slightest.

Mr. DAWES.—How soon after that did you know the fact?

Mr. DAVIS.—I was told of it the next day, which was the 1st of January.

Mr. DAWES.—At that interview in your office who were present?

Mr. DAVIS.—Nobody but Mr. Bliss and myself. It was in the district attorney's own private room.

Mr. DAWES.—After having invited Mr. Bliss to go down to the Custom House with you to see the settlement of the Phelps-Dodge case, and after you offered him one half of what you supposed was your fee, you and he went down together?

Mr. DAVIS.—No, sir; he did not go. He declined to go, saying that it would be of no use.

Mr. DAWES.—Repeat, in that connection, what you stated yesterday was his answer to you when you made this proposition to him.

Mr. DAVIS.—After I made him this proposition Mr. Bliss sat a moment looking, as I said yesterday, very much surprised. He looked as though he was hesitating what to say. He then arose and stepped to the mantel (it is a small room), leaned his elbow on the mantel, and turned around to me and said, "Now that you have made me that proposition, I feel bound to say to you that this case is not going to be closed to-day. I was informed, last night, of what took place at the Astor House, and I was at the Collector's house up to a late hour. Those people, or those persons, have been playing double with you. Somebody, and I will not tell you who, has been carrying water on both shoulders, and I say to you that the case is not going to be settled. It is no use in going down, and I think I will not go." These are, if not the exact words, as near them as it is practicable for one man to repeat the language of another. They made a very decided impression upon my mind at the moment.

Mr. DAWES.—You thereupon went down yourself?

Mr. DAVIS.—A little after Mr. Bliss went away.

Mr. DAWES.—When did you go?

Mr. DAVIS.—I first went to the door of Mr. Jayne's room, and inquired for

Mr. Jayne, and was told that he was with those officers up stairs, in the naval office. I saw there, however, standing in the room, or sitting, I am not sure which, Mr. Knox and Mr. Wakeman, counsel for Phelps, Dodge & Co. A few words passed between them and myself about the case, and I went up to the naval officer's room and back through the business room, into what I understood to be the naval officer's private room—his own office.

Mr. DAWES.—Whom did you meet there?

Mr. DAVIS.—I saw Mr. Jayne; the Collector, General Arthur; the Surveyor, Mr. Cornell; the Naval Officer, Mr. Laffin, and a gentleman whose name you excused me from naming yesterday.

Mr. DAWES.—I want to know all the persons who were there.

Mr. DAVIS.—If the Committee insist upon it, I can say who were there. I may say that I have no knowledge of this person having any connection with these matters.

Mr. DAWES.—The inquiry is, if you will be good enough to tell us, whom you met in that room?

Mr. DAVIS.—This person was Senator Conkling.

Mr. DAWES.—State, then, all—put them all together in one list, so that I may not be supposed to be searching for one name. Give the list of those persons whom you found in that room.

Mr. DAVIS.—The Collector, General Arthur; the Surveyor, Mr. Cornell; the Naval Officer, Mr. Laffin; Senator Conkling and Mr. Jayne. I have no recollection of any other person, though it is possible that some of the clerks, etc., might have been in the room.

Mr. DAWES.—Report as briefly as you can what transpired in that room while you were there.

Mr. DAVIS.—Before doing so I ought to say that in stating what transpired in the room yesterday I stated it briefly, without stating all that transpired. I stated substantially what transpired in regard to the subject matter.

Mr. DAWES.—That is all I desire.

Mr. DAVIS.—There was much more said than I stated yesterday. There was a discussion.

Mr. DAWES.—Give us substantially what was said as briefly as you can.

Mr. DAVIS.—The substance, so far as I was connected with it, was this.

Mr. BECK.—You had better state it all; it will save time.

Mr. DAVIS.—I went into the room and spoke to these gentlemen and shook hands with Senator Conkling, and, I think, with all these gentlemen. After a moment Mr. Jayne said, he being the first speaker of whom I have any recollection, "Judge, we want to know what have been the decisions

of the courts in regard to the question, whether the whole invoice is forfeited, or whether the particular articles affected by fraud may be forfeited." I then said that I was willing to give any advice which I could in regard to that question, but before I gave any advice whatever, I wanted it distinctly understood that in regard to the fees in that case I was to have nothing whatever to do with them; that they were to go to my successor, and that I wanted, before I said anything, to have it understood that I did it entirely disinterestedly in regard to any fee. Of course you can all see that I was a little, perhaps a good deal, irritated at what I supposed had occurred, and I did not know the exact person who had produced it. I then went on and gave what I understood to be the decisions affecting that question; that the courts in New York had, as I understood, invariably held, whenever the question came up, that the forfeiture affected the whole invoice, but that I understood that Judge Clifford had held in some case in Maine (I have never seen this opinion) that the forfeiture might be applied to the articles affected. Whether that was in a charge to a jury or in a formal decision of a case, or in a written opinion, I had no recollection. Indeed, I had never seen it, but I had so understood. Then a discussion arose on the construction of the law.

Mr. DAWES.—Who participated in that discussion?

Mr. DAVIS.—The statute was there and it was read. Senator Conkling read the statute. He had it in his hand; whether it was brought in after I came, or not, I do not know. He took the statute and read it over, and said it did not seem to him that there could be any doubt (I only give the substance of his remarks, of course), that the true construction of the statute was that the whole of the invoice was forfeited, and that under such a state of facts he thought it the duty of the collector to bring a suit for the entire amount of the invoices, instead of for the articles affected with the fraud. I said to him that I thought that under the rules of construction adopted in the Federal courts in all revenue cases, that was the construction which would be put upon that statute. But I said that if the question were one purely at common law, under common law rules, that statutes imposing penalties and forfeitures were to be construed in the milder sense (*anelliore sensu*). I thought the highest court would give the construction that would apply the forfeiture to the articles actually affected, but I understood that the tendency of the Supreme Court was, as shown in the wine cases, the Cliquot case and some other cases, had been to give to those statutes a rigid construction on grounds of public policy, and that I thought the Supreme Court would give the construction which he gave to the statute.

Mr. DAWES.—Carry it out to the conclusion.



Mr. DAVIS.—The conversation was all of that general character, and all participating somewhat in it. I think that the collector said that he had great doubt about the propriety of directing a suit for the forfeited articles, but thought that a suit should be directed for the entire invoices. I said that that, of course, was for him to judge; that the other course had been taken by the collector since I had been in office, in some cases, and I think (I am not certain) that I referred to a case in which that course had been pursued, and where, as I understood, it was pursued after some consultations with the Secretary of the Treasury, who happened to be at the collector's office in New York when the case came up. I can state what that case was.

Mr. DAWES.—No matter about that.

Mr. DAVIS.—I think I made an allusion to that case, but the substance of the conversation I have already given, except that I said, after this talk occurred, that these gentlemen, referring to the counsel of Messrs Dodge & Co., were pressing this compromise, and that, in my judgment, if the case went to a trial no jury would ever give a verdict for one tithe of the amount offered, and probably would not give a verdict for anything; and I gave as my reason for that, the difficulty of getting verdicts in that city—which before then existed more than it does now, I am glad to say—the difficulty of getting verdicts in that city in any case of that kind, however flagrant. I also stated that the disparity between the actual loss to the Government and the amount claimed was so very great that I thought no jury would believe that actual fraud existed, and that the only expectation of a verdict that could be entertained would be that the court should feel it its duty to direct a verdict.

Mr. DAWES.—What conclusion, if any, was come to while you were there?

Mr. DAVIS.—None.

Mr. DAWES.—You left them in consultation?

Mr. DAVIS.—I left the gentlemen whom I have mentioned all together.

Mr. DAWES.—Do you know whether a suit was commenced after that time?

Mr. DAVIS.—Only by hearsay. I know by hearsay and by the statements I have read. I heard that, on the 2d of January, the letter came directing Mr. Bliss to commence suit for \$1,000,000, and that at the same time a check for \$250,000 was sent up to him as the amount to be paid in compromise. This I do not speak of as having any personal knowledge.

Mr. DAWES.—Did you understand that the check and the order for the suit came together?

Mr. DAVIS.—I so understood, but I do not know it. I understood that they came in on that day.

Mr. DAWES.—When did you first learn of the overvaluation of Phelps, Dodge & Co.?

Mr. DAVIS.—You mean of the fact that the principle they adopted aided to give the Government larger duties?

Mr. DAWES.—Yes.

Mr. DAVIS.—Some time afterward, and not long before I wrote that letter to Mr. Dodge, which has been published. I think you will find that in that letter I stated that fact.

Mr. DAWES.—No one of the statements of Mr. Jayne, or of any other person resulting from his examination, communicated to you that the transaction of Phelps, Dodge & Co. disclosed that fact?

Mr. DAVIS.—I do not know that it was known to Mr. Jayne at that time.

Mr. DAWES.—The inquiry was, whether it was communicated to you.

Mr. DAVIS.—No, sir; it was not communicated to me at all by any one.

Mr. DAWES.—If they had ascertained that fact during the examination of the books and papers of Phelps, Dodge & Co., they made no such communication to you?

Mr. DAVIS.—No, sir.

Mr. DAWES.—Would an examination of the books and papers of Phelps, Dodge & Co. have disclosed that fact as easily as the fact of the undervaluation?

Mr. DAVIS.—I suppose they would disclose it, but I suppose also that the parties who made the examination were not looking for that. They were looking for other things. They were looking for the deficiencies.

Mr. ROBERTS.—I understood you in what you said about the Phelps, Dodge case to indicate that the propositions for settlement all came from the house of Phelps, Dodge & Co., or their representatives?

Mr. DAVIS.—I said that when I went over to the Astor House I was told by Mr. Jayne that a proposition had been made to pay a sum which, according to my recollection, was \$150,000. After the conversation there, which I narrated, in which I suggested as a basis of settlement some principle which the collector might recommend, such as taking the value of the articles themselves that were affected by the fraud (and which was really the basis carried out in the ultimate settlement), and after the figures had been made and presented to the counsel for Phelps, Dodge & Co., the counsel retired and immediately returned and made the offer to pay that sum or to pay a sum to be ascertained upon that basis. I ought to say however, that the invoices were not all there. When Mr. Jayne went through those that he had, and reported the amount, he said that he had taken the items of the invoices which were actually present, and that, assuming that those which were not there would produce similar results

the aggregate result would be about \$260,000; but it was understood that it would be subsequently ascertained accurately what was the amount of the items, and that the \$260,000 should be increased or diminished as the result should turn out to require. That was the idea suggested. The \$271,000 was, as I understand, the subsequent accurate ascertainment of that result. Of course, I had nothing to do with that ascertainment.

Mr. ROBERTS.—That increase was based altogether, as you understood, on that estimate of invoices?

Mr. DAVIS.—So I understood it.

Mr. ROBERTS.—It had no reference to any increase demanded for pay for counsel?

Mr. DAVIS.—Not to my knowledge. I understood that it turned out that the invoices which were not present increased the aggregate from \$260,000 to \$271,000.

Mr. ROBERTS.—At the interview at the Custom House on the 31st of December, the officers, as I understand you, did not approve of the proposition to settle?

Mr. DAVIS.—No, sir; I did not mean to be so understood.

Mr. ROBERTS.—What was the determination of the officers in regard to the settlement?

Mr. DAVIS.—The consideration of the officers, as I understood, was on the propriety of directing a suit for the gross sum to be closed up in the manner as had been suggested at the Astor House, that is whether to direct the district attorney to sue for that sum instead of suing for the gross amount of the invoices, and then have the Secretary of the Treasury consent that that sum be taken.

Mr. ROBERTS.—Do I understand you that that suit was to be commenced simply as a means of settlement, or with a view to actual prosecution?

Mr. DAVIS.—Only as a means for carrying out the settlement.

Mr. ROBERTS.—That is what I want to get at, whether the result of that meeting was that there should be a settlement, and that the discussion turned simply on the steps by which that settlement should be reached.

Mr. DAVIS.—The result of the meeting at the Astor House was that there should be a settlement on that basis, provided the collector should direct the suit to be brought in the form suggested. That was the result. It was no consummated thing, because, of course, it was understood that it was all within the collector's control, whether to direct the suit in that form or in the form in which he did direct it.

Mr. ROBERTS.—I am speaking of the interview on the 31st of December.

Mr. DAVIS.—There was nothing said of the proceedings there except suggestions as to the doubt of the proper construction of the statute.

Mr. ROBERTS.—What was the determination of the officers on the 31st of December in regard to the settlement? Did they propose to approve of the settlement on the basis which had been talked about?

Mr. DAVIS.—I so understood it, and the only question was as to the form of instituting proceedings. The settlement was to be carried out according to that arrangement; but the form of proceeding was a question of doubt in the collector's mind.

Mr. ROBERTS.—A good deal has been said about the influence employed to bring about the settlement. State whether or not you saw or knew of anything like terrorism, further than what might be inferred from the application of the penalties provided in the law.

Mr. DAVIS.—I must, in all frankness, say that I did not. I did not understand anything of that kind. Nothing occurred in my presence in the nature of terrorism or threats, and I certainly would not have permitted it. Something has been said in this case in reference to some other matter—an allusion to some private, personal matter. I never heard of it at the time, nor knew that such a thing existed. If there was anything of that kind which had operation on the proposition to settle, it was without my knowledge.

Mr. BECK.—I have never fairly got to understand what you meant by that meeting at the Astor House on the night before the 31st December. Something was agreed on there, before Mr. Bliss met you at your office, I do not think you have yet stated. At the Astor House, what was agreed upon there?

Mr. DAVIS.—I am glad you refer to it, because, on reflection, I find that I did not name one gentleman who was there. I am very anxious to be distinctly understood as to what occurred there. I stated, and now restate it, that on that day I was sent for by a messenger from Mr. Jayne requesting me to come to his rooms at the Astor House. He lived in rooms there with his family, and had a parlor of his own. I went down there and found Mr. Jayne there, and Mr. Knox, and Mr. Wakeman, who were the counsel for Phelps, Dodge & Co. Mr. Jayne told me that there had been a proposition of compromise in the Phelps, Dodge & Co. case, by the payment of \$150,000, but which, however, he was not willing to accept, as it was not enough. He then said to me that they had sent for me for the purpose of inquiring as to how the matter, if arranged, could be at once closed up without any further proceedings—meaning, of course, without the necessity of sending the proposition of settlement to Washington for approval before its acceptance; to which I replied that the collector would

probably not approve of anything they did unless it was based upon some principle which had been adopted before as a basis of action in such cases; and I then said to them that, heretofore, in some cases the practice had been adopted of selecting some invoice or invoices about equal to the sum which was offered, and directing a suit for that amount to be commenced by the district attorney, and on his commencing a suit for that amount demanding that sum, on the party coming into court and offering that sum, in the nature of a *cognovit* or judgment, judgment could be immediately taken for that amount and the matter disposed of without delay. Mr. Jayne remarked that he recollected three cases in which that had been done. The other course was to select from the invoices the tainted items, if I may so describe them, and order suit for their value, and, after the suit was commenced, for the party to appear and give consent to a *cognovit*. These two courses I suggested had been adopted on several occasions by collectors. Thereupon Mr. Jayne was requested (not by me, but by the counsel for Phelps, Dodge & Co.) to ascertain the amount of those items that were alleged to be affected. He sat down and figured up the amount. I recollect now—in conformity to his recollection (for he told me yesterday that I had fallen into a little error there)—that the invoices were not all present, but he went through the mass of invoices that were present. The other gentlemen went into another room, and I sat there looking through the newspapers, while Mr. Jayne was examining the figures. He went through the papers that he had there, and then announced that he had not all of them there; but that the result was, estimating that those not present would produce substantially the same result as those present, that the aggregate amount would be \$260,000.

Mr. BECK.—At that interview was there any one else present except you, Mr. Jayne, Mr. Knox, and Mr. Wakeman?

Mr. DAVIS.—I was going on to tell you about that, and I shall name a gentlemen who came in subsequently. Mr. Jayne reported this sum to me. I was astonished at its magnitude, and said that Phelps, Dodge & Co. would never pay any such sum as that. He replied that they would. Then the counsel were called for, and they came in, and at that time Mr. Fullerton, a partner of Mr. Knox, came in also, saying that he had just got out of court, which was the reason he had not been in before. Then the amount was given. Jayne gave the figures. The counsel looked over the figures and retired, as I understood to go to the room where Mr. Dodge and Mr. James were, neither of whom I saw on that occasion. After a little they came back, saying that they were ready to pay the sums ascertained, and Jayne said that that was not an absolute sum, but an approximate one, and that if in looking over the thing more accurately it

should turn out to be less, it was understood that a reduction was to be made; and if it turned out that the items aggregated more, an increase was to be made in the sum. Then I was requested to go to my office, and wait the sending up of a letter from the collector to commence that suit, and they went (Jayne and, as I understand, the counsel for Phelps, Dodge & Co.) to the Custom House to procure the collector's action in the case. I was requested to wait at my office for one hour, and not to leave before, and that, if they did not get around before that time, I was asked to take a *capias* to my house, so that they might come there in the evening.

Mr. BECK.—These were the only persons you saw there?

Mr. DAVIS.—The only persons I saw except Mr. Jayne's private secretary, who was all the while present in the room or about there.

Mr. BECK.—They failed to call on you any more that night?

Mr. DAVIS.—They failed to call upon me.

Mr. BECK.—You took the *capias* home and no one called?

Mr. DAVIS.—No one called.

Mr. BECK.—Did you understand that they had another meeting that night, from Mr. Bliss's remark that they were playing double with you?

Mr. DAVIS.—No; I only understood from his remark that some person connected with the Custom House had advised him of the arrangement that had been made, and had suggested that if he could tide it over one day the fee would be his instead of mine. That was the idea I got. There had been no meeting that I had heard of.

Mr. BECK.—I did not know but that there was a subsequent meeting and that instead of going to your house they had all gone to the collector's.

Mr. DAVIS.—I had no idea of that. They went, as I supposed, to the collector's office, but I do not know that they found him when they got there or not.

The CHAIRMAN.—Is there anything additional that you would like to state to the Committee?

Mr. DAVIS.—Mr. Dawes asked me to state what other gentleman was present in the room in the Custom House on the 21st December. Now, I have not the slightest idea, and I have certainly no knowledge, and I have not any reason, except such as I have laid before the Committee, to suppose or to infer that he was in any way concerned in that matter; and I do not wish to be understood as conveying in any degree the remotest imputation of the kind. I certainly want to exclude that idea entirely. I should be very sorry, in respect to any member of either House, to make a good sug-



gestion which might be warped into the idea that I wished to convey that impression.

Mr. DAWES.—In putting the question I had no previous intimation who the person was. I simply desired to know in what way the statement could be corroborated.

Mr. NIBLACK.—You have not referred to the letters written by you to Mr. Jayne?

Mr. DAVIS.—I thank you for reminding me of them. Mr. Jayne, it seems, read to this Committee two letters which I wrote to him, in which allusion is made to the Phelps-Dodge case. Of course, they were private notes, which he had no business to produce here. But I think you will observe, if you look at them, that they are simply an expression of my opinion of the character of the proceeding to oust me of a fee, which, of course, nettled me a little. I have been very glad, since the facts have been more fully developed to me, that I did not get any fee in that case; but at that time I did feel a little nettled about the treatment I had received. I thought I was not well treated, and, speaking to Jayne about some other matters, I threw out an allusion, which I knew he would understand, to those transactions. I said in one letter that the case of Phelps, Dodge & Co. would not have been so badly botched, or something to that effect, if the arrangement at the Astor House had been carried out as was contemplated. By that I meant, of course, that the desire, as I understood it, of those gentlemen to have the matter closed up without publicity or delay could have been consummated, and would have prevented the long controversy which afterward resulted. I have no other explanations to make.

## COMMENTS OF THE PRESS.

*The following articles, copied from the leading journals of the country, exhibit the drift and tone of public opinion during the time that the proceedings of the United States revenue officials, under the "Moiety and Seizure Acts," were under investigation before the Committee of Ways and Means of the House of Representatives :*

[Special Dispatch to THE NEW YORK TIMES.]

WASHINGTON, March 4, 1871.—The statement of Mr. Jayne was continued to-day before the Committee on Ways and Means. It is substantially determined that Mr. Wm. E. Dodge shall be heard by the Committee to-morrow. Mr. Jayne was instructed by the Committee, to-day, in the beginning of his remarks, to make his statement entirely impersonal, and not to enter upon specific statements of individual cases. Mr. Jayne's statements before the Committee, taken together appear to have created an unfavorable impression against himself and the moiety system. He has been very much excited in regard to the matter, and has been with great difficulty restrained from the use, before the Committee, of the most offensive and outrageous language toward prominent and reputable merchants of New York City.

[By Telegraph to THE TRIBUNE.]

WASHINGTON, March 3, 1874.—Eight hours in a sleeping car between New York and Washington did not have a tendency to smooth the temper of ex-Treasury Agent Jayne, for he appeared before the Ways and Means Committee to-day in much the same state of mind as he showed yesterday when he was recounting the story of his wrongs in the office of a New York Court. In his previous statement before the Ways and Means Committee he had spoken with some warmth of the manner in which, as he alleged, merchants had defrauded the Customs revenue, but to-day he lost all his cunning when confronted with the New York and Boston Committees of merchants and business men, and used such language that he would have been compelled to leave the committee

room had he not retracted it in a calmer moment. He said:

I stand before you accused of wrong. These gentlemen come and ask you to listen to charges given under the impulse of public opinion: and shall I stand here accused while my wife to-day is broken-hearted by these charges made by these infernal thieves and their representative?

Mr. Wood and other members of the Committee said they could not permit such remarks as those just uttered by Jayne, who was required to take his seat.

There were ten or fifteen gentlemen, besides the members of the Committee present, but the public was excluded and reporters refused admittance. The first portion of the session was occupied by the Committee in a conversation as to preliminaries and the manner in which the investigation should be conducted. Mr. Jayne finally appeared, and the business of the session was begun. It will be remembered that a fortnight ago the Committee held a meeting at which Jayne made a statement, showing books and pretending to be able to exhibit every case in which he had acted in the most unfavorable light for the merchants. The Committee then decided to hear the merchants' side of the story, and they were accordingly permitted to be present at the meeting to-day.

The statement of Jayne at the previous meeting was read to-day, and he continued his statement. His time to-day was principally occupied in reading from and denouncing the statements in *The Tribune*. He spoke particularly of the case of Rufus Story, of New York, whom he accused of defrauding the Government in the importation of pepper. This was a case against which the ex-detective seemed to feel particular malice,

owing to the fact, probably, that a statement of the dishonest manner in which Mr. Story had been treated had been printed, with about fifty other cases, in *The Tribune*. He expressed a desire to go over the whole number and "explain" them, but he was very quickly given to understand that he was not summoned for the purpose of abusing newspapers, but to furnish information. His mind was dwelling on what he calls the attacks made upon him, and he denounced the merchants in the room as thieves and swindlers, and expressed his intention of living long enough to prove his statements.

There was much excitement at the time, and fears were entertained that the ex-agent was losing his mind. He was in a white heat until called to order.

The Committees now here are preparing a list of questions to be submitted to Jayne, the answering of which will probably give him some annoyance. In his hot blooded manner to-day he challenged the gentlemen present to bring a case before the Committee in which he did not act wholly within the law, and justly to the Government and the individual. This challenge the Committee have accepted and the first case to be given to the Committee for consideration will be that of Phelps, Dodge & Co., and a dozen others are ready to follow. Mr. Dodge will himself take the stand, and present himself for examination as soon as Jayne gets over his anger enough for him to listen with patience to a recital of official robberies.

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[From THE NEW YORK TRIBUNE, March 4, 1874.]

The appearance which Informer Jayne made before the Committee of Ways and Means of the House of Representatives, on Tuesday, was the subject of general comment yesterday among merchants who are watching the progress of the inquiry now making into the Revenue laws with great interest. There was some gratification expressed at the fact that Jayne had shown the weakness of his cause by an exhibition of bitterness which could hardly fail to have its effect upon the Committee.

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### JAYNE THE INFORMER.

A LEAF FROM HIS HISTORY.

[From the OSWEGO GAZETTE.]

As the name of B. G. Jayne, the informer, has been so conspicuously brought forward in connection with the investigation before

the Ways and Means Committee of the House at Washington, it may be of some local interest to recall an episode in his history which is well known to politicians in this Congressional district. Jayne was born in the wilds of Wayne County, Pa., and was for some time clerk in the Paymaster's Department, in Washington. In 1867 he was dismissed for defaming the character of Paymaster-General Brice and Major Brooks. He subsequently established a photographic saloon in Ithaca, and also had a sewing machine agency, and failed.

At the time of the Republican Congressional Convention, which was held in this village some eight or ten years ago, and in which Giles W. Hotchkiss, of Broome, and William S. Lincoln, of this county, were candidates for the Congressional nomination, Jayne was one of the Tompkins County delegates. Upon Jayne's representation that he could control the vote of the delegation from his county at will, Mr. Lincoln placed in the hands of the former an article agreeing to pay him one thousand dollars in ease of his (Lincoln's) nomination. Mr. Jayne, however failed to handle his delegation as he had agreed, and the Convention was at a dead lock for several days. The dead lock was finally broken by Informer Jayne, in a manner precisely like that employed about a year ago by York against "Old Subsidy" Pomeroy in the Kansas Legislature. Jayne, in a manner which the virtuous York appears to have successfully copied, arose in the Convention, and, in an ostentatious manner, exposed the agreement between himself and Lincoln, whom he held up to the delegates present as a monster of moral turpitude, announcing at the same time that his support should be given to Mr. Hotchkiss.

The good Giles W. was at once nominated, and after his election he rewarded the treacherous Jayne—probably according to previous agreement—by securing his appointment to the position where, as a spy and informer, he has succeeded in securing both wealth and a most unenviable reputation.

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[Correspondence N. Y. TRIBUNE.]

WASHINGTON, March 5, 1874.—The developments of to-day have swept away like chaff the ingenious, unfair, and dishonest statements of ex-Treasury Agent Jayne before the Ways and Means Committee. His hypocrisy, his facility of expression, his knowledge of the laws relating to moiety, and the positive ignorance of the members of the Committee as to the manner in which mer-

chants are robbed under the guise of laws relating to seizures, forfeitures, &c., had all combined to give Mr. Jayne a better standing before the Committee than he deserved, and for a time, at least, it was apparent that he had made a strong impression on their minds that there was not an honest merchant in business. The tide now has been so completely turned that Mr. Jayne has not a friend upon the Committee.

The clear, compact, simple statement of Mr. Dodge to-day, and the remarks of Mr. Hyde at the meeting of the Committee this evening, have placed before the members a picture of the disgraceful system now practiced, so plain in every feature that it cannot be misunderstood. The system was shown to be so monstrous in its character and extent that it extends into Legislative halls, to the judicial bench, and almost to the very feet of the very highest in the land.

Mr. Dodge showed that his firm had been in business for forty years, and that during that time they had paid the Government in duties alone \$50,000,000, and that never before had they been charged with fraud or had any trouble. The amount of duties due when Mr. Jayne began was confessedly only \$1 600, and the total importation on which the alleged undervaluation occurred was only \$6,658. He also showed that during one year the firm had added to the cost of goods between \$200,000 and \$300,000, and paid duty on them at the increased rate of 25 per cent. During a period of five years the firm had done a business of \$40,000,000. The firm, as he could show, had on frequent occasions, by accident, received goods at an overvaluation. Mr. Dodge described the manner in which he was informed of his alleged frauds in Jayne's den. Jayne, James and Noah Davis were present. From that time the game of intimidation began, and on every opportunity Mr. Phelps was reminded of the number of years the members of the firm could be sent to prison, how much they could be fined, and how much they could be made to forfeit. This game was not confined to Jayne and the small players, but the names of Congressmen, Judges, Senators, Secretaries and the highest powers in the country were used to drive the firm to a settlement. Gen. Butler was so much concerned that he himself played the part of threatener. He told Mr. Dodge that there was one letter which would convict the firm before any court in the Union. Even the fair name of Senator Conkling was not unheard during the efforts to enforce a settlement.

There were many considerations which in-

duced the firm to settle. In the first place, the official power thrown against them was frightful in its extent, and could scarcely be resisted. It was evident that a conviction would be forced, and the payment, or even a decree against them of \$1,700,000, would seriously impair their credit at home and abroad; and further, it was known to them and to all that Secretary Boutwell was about to go out of office, and knowing Gen. Butler's power and his interest in the case, it was not improbable that he might influence the succession. Mr. Dodge said there were six or eight leading men in the country, among them several members of Congress, who were strangely interested in the case. He would have given the names of the members of Congress had the Committee asked them, but the Committee thought it would make the investigation rather too pungent.

The argument of Mr. Hyde is described as being one of the most powerful and startling ever made before a Committee. He said, among other things, that he could state from his experience while United States Attorney, and from his thorough acquaintance with the subject, that no merchant having due regard to his character and capital would venture to continue the business of an importer under the present law and its practical administration; and that the terror of merchants had been greatly increased within a very recent date by a knowledge of the fact that the leading representative of the Administration in the House of Representatives and one of the controlling men in the counsels of the nation was the man to whom special agents and informers resorted for legal information, and who was their paid attorney and a heavy participant in most of the compromises recently effected. This was said in a manner which carried conviction, and the portrait was recognized as that of Gen. Butler. Mr. Hyde said he knew the facts he charged.

It was after 10 o'clock to-night when the Committee closed its session, and another meeting is called for to-morrow. Just before the adjournment was made Mr. Jayne gave indications of "hedging," for he could not help seeing how the tide was turning against him. He told Mr. Hyde that had he known that there had been any overpayment on the part of Phelps, Dodge & Co., he would have obtained their release. He did not know there had been more overvaluations than undervaluations, or he would not have proceeded against them. It is evident that the entire Committee, without a single exception, are on the side of the merchants. Their whole proceeding and conversation showed it, and some of them

have even gone so far in private conversation as to denounce Jayne as a rogue.

[From the NEW YORK STAR, March 7, 1874.]

The story told by the Hon. William E. Dodge would make the brazen image in "Aida" blush with shame, had the scene of his sorry tale been Egypt rather than America. If ever "honorable" men were engaged in a conspiracy to rob and destroy the merchants of a country, the gang that mulcted Phelps, Dodge & Co. of nearly \$300,000 are they. The statements made at the time, coupled with the apparent haste and secrecy with which Phelps, Dodge & Co. paid their compromise fine, deceived the entire community, and the unfavorable comments of the press, to which Mr. Dodge alluded in his explanation before the Congressional Committee, were born of that history rather than of malice or lack of charity. Mr. Dodge's word will be believed in this matter. His report gives undoubtedly precisely what occurred, and Congress should compel the guilty officials who became rich at the expense of that firm to disgorge and refund every dollar over and above the \$1,600 said to be justly due the Government.

[From the BOSTON POST, March 6, 1874.]

It is with shame as well as indignation that one reads the statement of Mr. Wm. E. Dodge before the Ways and Means Committee. That a merchant who has been in honorable business forty years, paying more than \$50,000,000 in duties to the Government during that time, should be subject to defamation and plunder by such an official as Jayne, is a humiliating commentary on the boasted justice of our laws. The story of the great seizure of which Mr. Dodge's house was the victim, sets forth the chief features of the abominable moiety system in the worst light. There are the tampering with confidential clerks, the manufacture of false evidence, the threats of imprisonment, and finally the compromise on payment of \$271,000, all employed, not for the execution of the laws or the protection of the Government, but for the annoyance of merchants and the gain of spies. In importations of \$40,000,000 worth, covering a period of five years, the technical errors for which Mr. Dodge paid so enormously, amounted to only \$1,664 due the Government. It is incredible that for so slight an irregularity, innocently caused, so great and grave a wrong could be perpetrated in the name of the United States. General Butler appears in this

notorious business as counsel for informer Jayne. His part was characteristic. It consisted, as Mr. Dodge states, of threatening the merchants with letters surreptitiously obtained, and aiding to bring about the lucrative compromise. The association of Butler with each of the secret transactions now coming to light serves to keep him and his services constantly before the mercantile public whose advice and coöperation he so recently solicited on the subject of the Geneva award and the currency distribution.

[From the N. Y. EVENING POST, March 6, 1874.]

The present management of political affairs received yesterday a terrible blow in the proceedings before the Committee of Ways and Means at Washington. The appearance of Mr. Dodge, the head of the house of Phelps, Dodge & Co., of this city, and the character of the testimony he bore are facts significant enough to be of national importance, and the influence which they will exercise upon the minds of all honest and thinking men can hardly be overestimated.

We are not in the slightest degree biased by any private estimate of our own of the character and position of Mr. Dodge, but look upon him here simply as a representative man. He has, in the first place, a national reputation in a threefold capacity—as a merchant, as a politician and as one warmly interested and active in the advancement of religion and morals. His sincerity and honest zeal in the church and all that he believes legitimately belongs to it has never been questioned; as a merchant, his reputation, extending far beyond his own country, has for half a century been without a blemish; and his integrity as a politician, both in and out of office, has never been impeached. His country is the better for the life of such a man, not merely as an honorable and patriotic citizen, but as a merchant whose business has contributed enormously to its material prosperity; and the Republican party, of which ever since it had an existence he has been an active member, has been the more respectable for his attachment to it, and has received in its national and its local action the most generous pecuniary support where such support was legitimate.

When a man of such relations and weight of character, one so universally known and esteemed, appears before the national legislature, through its committee, and impeaches the administration of the laws of his country, it is a fact of immense significance. The facts presented by him are not, it is true, now for



the first time made public. They were set forth at length in the columns of this journal again and again at the time they transpired. Necessarily, however, our view of the case was confined to our own readers, while now Mr. Dodge's repetition of the facts and the arguments deducible therefrom, is spoken to the whole country with all the solemnity that official investigation can give it, and all the force that comes from personal responsibility. The people will now understand, on testimony that is neither impeached or impeachable, that a robbery under cover and terror of the law, as we long ago showed, was committed by the officers of the government upon this one house to the amount of a quarter of a million of dollars; and that this method of the administration of the laws is not the exception but the rule.

In China the successful merchant dreads to have it known that he is so. He shrinks with the utmost caution from any display of wealth, for to be known to be more than ordinarily prosperous is only, he knows to expose him to the cupidity of a set of bandits armed with official power. He becomes the subject of a "squeeze"—as the process is significantly called—of successive "squeezes," so long as it is thought that the pressure will yield returns. It is precisely to a despotism of this sort that the administration of the laws of our country has been reduced. Our whole commercial community, indeed every member of the community who has any means to be taxed for the support of the State, is subjected to a despotic terrorism from men in office, against which there is no defence and from which there is no appeal.

It is perfectly safe to say that never before in our history, never under any party, has there been any such miscrepulous and oppressive use of power. Such a statement as that of Mr. Dodge cannot be without results. It is made to the whole nation, in unquestionable terms, on authority that cannot be gainsaid; and the question, we believe, which the people will ask themselves will be: Which is it that must come to an end, this official despotism, or all hope of a just government.

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[From THE NEW YORK EVENING MAIL, March 6, 1874.]

Mr. Dodge's statement before the Congressional Investigating Committee is a straightforward, manly, and ingenious narration of facts which will impress the country favorably, and confirm the general confidence in the uprightness of one of our greatest mercantile houses. No civilized country will tolerate on

its statute books the enormity of imposing life imprisonment for a mere assault and battery or trespass, yet it would be about as reasonable as to expose a great mercantile house to such penalties as Phelps, Dodge & Co. became liable to pay for undervaluations of a few thousand dollars in entries of several millions.

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[From THE NEW YORK TRIBUNE, March 6, 1874]

The statement of Mr. W. E. Dodge before the Ways and Means Committee yesterday is an effectual extinguisher to the wordy harangues of Jayne. It is too late to say a word as to the standing of the eminent merchant who has been obliged to defend an old firm against a disreputable spy. The contrast between the two men is so marked that we are not surprised to learn that the airy superstructure which Jayne raised before the Committee has toppled over. The vindication of the firm of Phelps, Dodge, & Co., ample as it is, may be taken as a complete and irrefragable argument against the whole detestable moiety system.

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[From THE NEW YORK TIMES, March 6, 1874]

The Committee on Ways and Means continued in session many hours to-day, hearing the merchants of Boston and New York in regard to the modification of the Customs laws. The statement of Mr. Dodge before the Committee obtains entire credence, and the manner in which the firm was dealt with has been denounced by members of the committee in very vigorous terms. So far as this feeling of indignation assumes a personal direction among members it extends towards Gen. Butler for the part he took in the transaction as Jayne's counsel. Butler's influence with the House has been greatly damaged by the statement of his connection with this affair, and he will scarcely have the hardihood to attempt to lead the House again till the storm has had time to blow over. One phase of the newspaper discussion of the moiety question is commented on quite extensively here to-day, and that is the attitude of two daily papers in New York, which, in order to serve partisan ends, denounced the firm of Phelps, Dodge & Co. as great swindlers of the Government in 1872, and which now, in order to damage the reputation of the Government officers, restore the firm to their original character of Christian merchants and gentlemen.



[*Washington Correspondence* N. Y. TRIBUNE,  
March 10, 1874.]

This has been a bad day for Detective Jayne and his attorney. While the latter was being roasted by Mr. Foster in the House, on the Sanborn business, the former was cogitating on means whereby he might escape some of the disgrace which hung over him in the Ways and Means Committee. To-night's session of the Committee has done the work for the detective. The two worthies, the rogue and his counsel, can keep each other company in their ruin, and join their lamentations on the uncertainty of sinful ways.

If there existed in the minds of the members of the Ways and Means Committee any doubt of the copartnership between Jayne and Butler, it was dispelled to-night by testimony which, while not of the best, may nevertheless be taken in this case as wholly convincing. With Butler as the attorney of Sanborn, and also the attorney and adviser of Jayne, and with the trouble that has overtaken the three, the information given to-day by Secretary Richardson, on the floor of the House, that he has suspended the payment of moieties to informers in cases under both the Sanborn contracts and the Custom House seizures, will be received by the combination of plunderers with feelings not easy to be described. The attorney may yet show some hesitation to relinquish two clients who promised such heavy tribute to his avarice, but publicity has gone to such an extent that even Butler, with all his audacity and *elan*, cannot hope to hold the questionable place he has so long filled in the party and in the House of Representatives.

The developments before the Ways and Means Committee this evening were simply crushing, and Mr. Jayne was left without a prop to sustain his despicable proceedings and oppressions; and when he finished his cross-examination he looked as though he had passed through a most trying and exhaustive ordeal. He came on the stand to-day much chastened in appearance, and not only the New York and Boston gentlemen who were present, but the members of the Committee, remarked that he was greatly altered in his manner, having lost much of his effrontery and impertinence. It will be remembered that when he first appeared here he announced with a great flourish that the merchants of New York were a set of thieves, and he would brand them before the Committee; that he would prove it from books, so clear as not to be doubted; and he talked loud and got red in the face at the very idea that the mer-

chants would come here to defend themselves. His next step was to play the patriotic and humility dodge. He told how much he loved his country and how much he had done for her; that he had done no more than the law recognized; that he had worked so hard in the service of his country that he had broken down in health; and he even went so far as to allude to his heart broken wife. His last step was to acknowledge his misdeeds and turn State's evidence.

To-day he was heard for some time and set up a general denial on most of the charges. He denied having known that Phelps, Dodge & Co. had ever imported goods at an over valuation, but Mr. Hyde will go on the stand to-morrow and testify that Jayne admitted to him that he (Jayne) had knowledge of the fact, and Mr. Dodge will show from his books, so long in the possession of Jayne, that there were entries showing it, and that in importations the over valuations were stated in the invoices which passed through the custom houses.

While the merchants here were reasonably satisfied that Gen. Butler had been the counsel of Jayne, and was otherwise mixed up in the Jayne conspiracy, they were nevertheless unwilling to make the charge direct without explicit proof. To-night Jayne admitted that he had engaged Butler as his counsel in the Phelps & Dodge case, and that he had consulted and paid him in several other cases. He did not say that he had paid Butler in any cases wherein no service was rendered.

Several merchants have written here to know if the resignation of Jayne had been accepted, as reported. The Secretary of the Treasury says that it was at once accepted upon receipt, and the fact is certainly entered on the records. It may be stated, however that Frank E. Howe, also a Special Agent of the Jayne description, but less oppressive, is still in office and will probably give the merchants as much trouble as they can endure unless the law is repealed. Butler's adherents give out to-night that he intends to make a fearful onslaught on the merchants and importers of New York and Boston, particularly on Phelps, Dodge & Co. His motive for attacking merchants in both cities is apparent—in Boston they opposed Simmons and in New York they oppose Jayne, both his favorites.

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[*From the NEW YORK HERALD, March 13, 1874.*]

In Magna Charta it is provided that "no freeman shall be fined save in proportion to his fault, nor shall any fine be levied on him to his utter ruin." It seems a remarkable

fact that one of the very wrongs that afflicted society in the days of the bad King John should arise to plague us in this model Republic, where the rights and interests of the people are supposed to prevail over all other rights and interests. Did the minions of the bad King ever do worse than the minions of our republican Treasury, which fines a man two hundred and seventy-one thousand dollars in a case in which the Government lost a little over one thousand dollars? All that can be said in favor of the oppressive laws was said yesterday by Mr. Bliss, and was very little, as will be seen by the report in our Washington letter.

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[*Washington Correspondence N. Y. WORLD, March 16, 1874.*]

Great was the curiosity and certainly not less great the anxiety to see the terrible Jayne once more on the stand, this time for the purpose of answering the merchants and their counsel, and for cross-examination. To the surprise of all, Jayne's whole bearing had undergone a change, and he has good humoredly been accused of selling out to the merchants. No longer attacking even Phelps, Dodge & Co., he merely cited some dirty case of pure smuggling in corsets, where he caught a man and made him pay \$26,000. He admitted even that the law of 1863 was in some respects too severe. And then came the terrible announcement, made of his own accord and not elicited by cross-examination, that frauds in the Custom House would be almost a myth if the officials were not in collusion. Amidst breathless silence he asserted that out of sixty-one cases he found fifty-three where custom officials had been in direct collusion with fraudulent merchants. But when he further asserted that he had reported these delinquents to the Secretary, and only a portion of them had been dismissed, while the major part of them are still in their old places, a thrill of indignation ran through the Committee, and Mr. Beck—his Scotch blood mounting to his very forehead—asked the detective whether, under these circumstances, the whole seizures were not a conspiracy? The undaunted Jayne immediately answered: "As long as thieves remained in the Custom House the seizures of books, &c., was simply highway robbery, and therefore," said he, "I quit."

General Butler has openly declared that he advised Jayne to report these men, and that the blame for the connivance must be borne

by those who were at the time responsible. "This," said the intrepid Butler, "is not mine nor Jayne's funeral." And it is shrewdly surmised here that Jayne made his admissions respecting the list of the tainted, and retained the list of the implicated by the advice of Butler, who paid Boutwell the first instalment of what he promised him, this day two weeks, for not sticking to his bargain in confirming Simmons.

Jayne, cross-examined by Mr. Beck, admitted that in order to get information the Government agent is obliged to deal with thieves and to receive stolen goods—the papers brought to him by the several clerks having invariably been stolen from their employers.

It is admitted here that the absence of the Collector, Naval Officer and Surveyor was very judicious. As they were interested in moietyes they could not with any good grace defend the system that has so long existed, nor are they willing to condemn it.

Attorney Bliss had no such qualms. The defender of the Sanborn scandal appeared before the Committee in all the glory of his shrewdness and impudence.

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[*From the N. Y. INDEPENDENT, March 12, 1874.*]

The exhibit made before the House Committee of Ways and Means by the merchants of New York and Boston—particularly by Mr. Dodge, the senior member of the well known firm of Phelps, Dodge & Co.—in regard to the outrages which have been perpetrated upon importers by Custom House officials, presents a picture of facts and processes of oppression and terrorism, under the cover of law, that is really astounding. The case of Phelps, Dodge & Co. is a striking example of these outrages. This firm, on the trumped up charge of intending to evade the revenue laws and defraud the Government, for which there was no just foundation, was virtually robbed of \$271,000, besides having its character for business integrity put in peril before the community. The way in which the thing was done Mr. Dodge details in his testimony before the Committee. There was, by pure accident, without any false invoices or intention to cheat the Government out of a dollar, an under valuation of \$6,658, on which duties were not paid, and the amount due the Government was \$1,658. Noah Davis, then District Attorney of the United States, now one of the Judges of the Supreme Court of this State, in a letter addressed to

the firm, declares that, after having officially investigated the case, he was fully satisfied that, although there was a technical violation of the law, there was no evidence of fraudulent intention, which really constitutes the offence the law itself defines and means to punish. And yet the Custom House officials claimed a penal forfeiture to the amount of \$1,750,000, and finally compromised this claim by receiving \$271,000—one half of which went into their own pockets under the infamous moiety system. We said at the time that the firm ought not pay a cent, and Mr. Dodge now says in his testimony that "they were fools for paying the money." His explanation of the admitted folly is that they were driven to it, as the least of two evils, by a system of terrorism, in which the bland and gentle ex-Treasury Agent, Jayne, who retires from the service enriched by about \$400,000 as his share of the spoils, acted a conspicuous part. As the facts are now developed the Government has but one course to pursue in consistency with moral honesty; and this is to pay back to the firm every dollar of this money, less the amount of unpaid duties, with interest at seven per cent. from the date of its receipt. The coerced payment was a wanton robbery, and the Government has no more right to be a robber than William M. Tweed.

#### THE CASE OF MR. DODGE.

[From the N. Y. TRIBUNE, March 14, 1874.]

That was a pathetic remark which Mr. William E. Dodge addressed to the Committee of Ways and Means at the end of his story. "Having been a merchant fifty years," said he, "I desired to die in peace; and when I paid this money, I wanted that to be the end of it. But it is paraded from Dan to Beersheba now, because other people have been touched." Mr. Dodge may have the satisfaction of knowing that the narrative of this affair has done more than any other one influence to make such wrongs as he has suffered impossible hereafter. If his misfortunes have been paraded before the public, they have at all events created a widespread feeling of sympathy with an honorable house, so cruelly ill treated, and of indignation at a system which justifies such outrages. We make no apology to our readers for surrendering to this strange and impressive tale so large a share of our space this morning. We

print a *verbatim* report of Mr. Dodge's speech before the Committee on our fourth page—the second of the extra sheet. It is full of interest to every man of business, and to every patriotic citizen who wishes to see the laws justly and decently administered, and it has never before been fully told.

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And now comes the question, why did innocent men pay \$271,000 instead of going into court and proving their innocence? That too, we think, is made clear. *They never knew with what they were charged.* From beginning to end they were subjected to a system of terrorizing. Their books were kept from them; they were assured that the Special Agent had discovered unheard of frauds; they were told that their case was one of the worst in Mr. Jayne's experience, that they had forfeited nearly two millions of dollars; that they could be sent to jail for a long term of years. They went to Washington, and there they found Mr. Benjamin F. Butler, as the Special Agent's counsel, breathing threatenings and slaughter. Secretary Boutwell urged them to go to trial, and promised if the case went against them to give it his personal consideration; but Mr. Boutwell was then a candidate for the Senate, and he would be out of the Treasury before their case could be reached. Besides, it would be a terrible blow to the credit of the firm if the news should be telegraphed all over the world that the United States had sued them for \$1,750,000 for alleged frauds upon the revenue. They compromised for a sum which, large as it was, they could afford to pay, rather than risk the loss of everything by an open fight. Now that it is seen upon how slight a foundation this great case was built up, it is easy enough to say—Mr. Dodge says himself—that it was foolish to yield to Mr. Jayne's threats. But it was not so easy to be wise in the dark.

The Dodge case will probably be the last of its kind in our history. The Committee of Ways and Means has given an impartial hearing to both sides of the question involved in it, and we believe the members are honestly bent upon doing justice. Neither the merchants nor the agents of the Government can complain that they have been accorded a scant courtesy or an imperfect hearing. In the final disposition of the controversy stories of individual wrong, like this story of Mr. Dodge, must have great weight. They are not exceptional. They illustrate the natural effects of the existing law, the inevitable abuses which follow an oppressive and unconstitutional statute.

## WHY THEY PAID.

[From the CHICAGO TRIBUNE, March 13, 1874.]

Certain partisan newspapers profess to be at a loss to understand why Phelps, Dodge & Co. consented to pay a penalty of \$271,000 for an innocent violation of statute by which the Government lost the trifling sum of \$1,600. They cannot understand why a firm which was consciously innocent should have submitted to be bled to such an extent unless it had been guilty of violating the revenue laws. In short, these partisan and protectionist sheets do not think it enough that an honest firm was robbed of more than a quarter of a million by official plunderers, but must blacken its reputation, if possible, by insinuating that it was in the habit of defrauding the revenue.

No fair minded and intelligent man can have any difficulty in understanding why Phelps, Dodge & Co. preferred to pay over the large sum of \$271,000 rather than appeal to the courts. Under the existing law, if a single item in an invoice is undervalued, the value of the entire invoice is forfeited. The under valuations charged against Phelps, Dodge & Co. affected a large number of invoices, aggregating more than a million dollars. Had the firm gone into the courts and lost their case, they would have lost not far from a million. Butler informed them that he had evidence on which he could beat them in any United States court. The firm, though consciously innocent of any intention to defraud the revenue, did not know but what this might be true. They knew what sort of a man Jayne was. They knew that they had been dogged by spies. It was a fact, of which they probably were not ignorant, that Jayne was in the habit of bribing clerks to tamper with the books and papers of their employers. Under these circumstances they certainly had no small reason to believe that Butler, Jayne & Co. had possession of enough of forged evidence to convict them. It was altogether natural, therefore, for them to conclude that, since they must needs be robbed, it would be better to be robbed of a quarter of a million than of a whole million. They were, doubtless, influenced by another consideration, which partisan journals can hardly be expected to comprehend. Time was when a mere accusation of defrauding the revenue was very damaging to the reputation and credit of mercantile houses. Phelps, Dodge & Co. labored under the impression that that time had not gone by. They dreaded a conflict with the Government, more on account of the injury their reputation might sustain than

on account of any immediate pecuniary loss. They were willing to make a large sacrifice to avoid publicity, and the consequent injury to their credit. They may have been mistaken. It may not have been in the power of such men as Jayne and Butler to injure their business standing. It certainly is now. The infamous system of official blackmailing has annihilated the moral power of the Government. But, mistaken or not, Phelps, Dodge & Co. unquestionably were influenced by a regard for their reputation, which was perfectly compatible with the most upright intentions in their dealings with the revenue officers. There has been nothing in their course, from first to last, which, in view of what is now known concerning Jayne and Jayneism, can raise a fair presumption that Phelps, Dodge & Co. ever intentionally defrauded the revenue to the amount of one dollar. All unbiased minds will admit this, and even the extreme partisan organs may be constrained to admit it one of these days, when Butler is no longer the party.

#### SKETCH OF THE INVESTIGATION BEFORE THE WAYS AND MEANS COMMITTEE.

[From the N. Y. WORLD, March 9, 1874.]

It is now admitted that the exciting topic of the session is the moiety investigation before the Ways and Means Committee. The interest and excitement, far from decreasing, seem to increase daily as the facts are revealed before the astonished members of the Committee.

The moiety system scandal, the infamous informer and spy system, had during last fall reached a stage which made it perfectly certain that some investigation would be necessary. Congress, like Macbeth, had heard "curses, not loud but deep," and it seemed necessary to do something. Yet, so deeply rooted is the evil, that many friends of the dominant party, who are anxious to have peace, concluded to simply patch up a modification of the infamous law of 1863, and then let things gradually go back into the old groove. It was not until the Sanborn contract scandal came to light, and the impudent and indecent anxiety on the part of Gen. Butler to suppress revelations on the subject, that the country was really aroused; yet the Sanborn case might have occupied attention enough to smother the Custom House seizure scandals; but fate ordained it otherwise. Mr. Jayne, without consulting any of his friends, went, on the 21st of Febru-



ary, before the Ways and Means Committee, stated that he had resigned his position as Special Agent, that he now was a private citizen, and was ready to throw light on the subject of seizures of books and papers. The Committee felt inclined to hear him, but it soon became pretty evident that an *ex-parte* statement would be unjust to the absent accused merchants.

The hearing was, therefore, postponed to the 3d of March, when the implicated merchants were to be present and face the man whose very name inspired them with terror.

It is a remarkable fact, that during the first two hearings of Mr. Jayne, on the 21st and 22d of February, such was the villanous system of fraud and systematic cheating that the Committee inclined to think that it would be even dangerous to change the law of 1863. It need hardly be said that the absent merchants were aroused, and they assembled in force last Tuesday morning, the 3d of March. In the meantime the Committee agreed to one principal procedure, viz., that they were not sitting as a court to decide the guilt or innocence of individual cases, that the sole object of inquiry was to find whether the law of 1863 bore hard on merchants, and whether or not it should be abrogated.

But they reckoned without their host. It was impossible to conduct an inquiry of this kind without listening to the alleged hardships and outrages suffered by the most influential members of the mercantile community.

On Tuesday, March 3, Mr. Jayne, in the presence of a full Committee and an audience comprising a delegation from the New York, Boston, Philadelphia, and Baltimore Chambers of Commerce, headed by Mr. Jackson S. Schultz and others, also in presence of Mr. William E. Dodge, opened the proceedings. Unfortunately for the much feared late Special Agent, he was smarting under some severe strictures that appeared in the public press, and he entirely lost control over himself. He stigmatized the mercantile community as a "set of infernal thieves," and the audience present as their representatives. He actually told the Committee, and no doubt believed it, that the merchants, press, and lawyers had combined in a conspiracy against him to blacken his character. In short, he fully proved the truth of the classic adage, "whom the gods wish to destroy they first make blind or mad."

Had Mr. Jayne simply confined himself to a statement of the working of the law of 1863; had he early and collectedly stated that he felt it his duty to show favor to no one under that section; that the essence of the law may be hard and harsh, but that was not his busi-

ness, as he simply carried the law out; had he refrained from individualizing cases, the odium would naturally have fallen on the law of 1863. But, in defending the provisions of this act, he tried to convince the Committee that the extortion of two, three or four hundred thousand dollars at one fell swoop from a firm, and the subjecting them to all the scandal, bad repute, and villanous slanders that hired spies could inflict, far from being a hardship, was an operation not only pleasant and benevolent but a very meritorious employment, for which he deserved a vote of thanks from Congress. Such a course was surely sufficient to weaken even an *ex-parte* statement. On Wednesday, having cooled off somewhat, Mr. Jayne made a more collected and calm statement to the Committee. On Thursday Mr. Dodge related in full his case, which had become a *cause celebre* all over the world. Mr. Dodge admitted unreservedly that he and his firm had made incorrect, nay, false statements over and over again; that they had received slips which by right ought to have gone to the Custom House; but he also fully convinced the Committee that such breaches of the law could not possibly have been committed with intent to defraud Government, inasmuch as the whole alleged loss to the Treasury in five years was only, according to Mr. George Bliss, Jr.'s, statement, \$1,664,72. Mr. Dodge also frankly stated that the mere fact of a Custom House suit against his firm being talked of had damaged their credit both at home and abroad. He might have gone further. I suppose he might have related specific facts to verify his statement. There is no doubt now at all that the true cause of the settlement was not the fear of scandal or even black mail, but simply the fact that it was cheaper to bleed for \$300,000 and have done with it than to risk the stoppage of a business that amounts to \$8,000,000 annually. No doubt the settlement was the cheapest way out of the difficulty. Mr. Dodge's statement as to the special agent system of obtaining information was very damaging. There is something very repulsive to the Anglo-Saxon mind in the idea of the Government spying upon private citizens and hiring clerks hitherto thought fully in the confidence of their employers to act as spies in the counting house and run out round the corner to send information where it would do most good, or rather most harm. It was on Thursday that the Committee began to feel somewhat ashamed of the outrageous law that could sustain so infamous a system. The Boston and New York lawyers, Mr. Hyde and Mr. Brainard, followed Mr. Dodge. Lawyers at best will talk like lawyers, and in a case of

this kind eloquence is thrown away. It is the man who has suffered disgraceful outrages from a villainous law who will make the surest impression. To-day (Saturday) the culminating point was reached, and it must be confessed that Mr. Jackson S. Schultz carried off the barrels. As a merchant he felt for his class, and in unmeasured terms he denounced not only the law but the spies, detectives, and their lawyers. He did not spare General Butler, and at the close of a two hours' speech he left the impression on the Committee that Jayne had told the truth in one thing at any rate—there were "a lot of infernal thieves and their representatives" somewhere.

[From the BOSTON COMMERCIAL BULLETIN, March 14, 1874.]

Some months since, in referring to the case of Messrs. Phelps, Dodge & Co., of New York, we expressed the decided conviction that this firm was entirely innocent of any criminal intent, and that theirs was a technical error only, compared with which the penalty paid was a scandal upon the good name of the Government. The week's developments have more than confirmed our words, for it now appears, by Informer Jayne's own words, that the over valuations in this firm's invoices exceeded the under valuations, and that they had in reality paid the Government more than was its due.

The country cannot make good the wrong that has been done in its name, but it can so revise the statutes that such outrages shall be impossible in the future.

If "an honest confession is good for the soul," how excellent for what is spiritual in Informer Jayne must be the disclosures which he has made of late. Having seenred for his own use the lion's share of the plunder, he now virtually turns State's evidence, becomes an informer upon his late fellow informers, and tells us that he left the service because he "could not stay among a pack of thieves." It must be exceedingly comforting to the eminent firm, Messrs. Phelps, Dodge & Co., who have been dragged before the public as culprits, to know that this worthy, now that their honor is fully vindicated, asserts that, had he fully understood their case, he never would have prosecuted them!—*Ibid.*

[From the NEW ORLEANS PICAYUNE, March 15, 1874.]

This evidence of Mr. Dodge reveals a fearful condition of affairs under the existing law.

No mercantile house is safe from spies and informers. The most innocent error of appraisalment is distorted into systematic robbery, and at once, without investigation or trial, the books of the house are seized and the business thrown into confusion. However innocent the merchant may be he prefers to pay an enormous sum of money rather than run the risk of having his case passed upon by an unknown Secretary of the Treasury. The fears of Mr. Dodge lest Secretary Bontwell might be succeeded by some one less honest and conscientious, were not ill founded. The present Assistant Secretary of the Treasury, Sawyer, was a carpet bag Senator when the bill allowing the Secretary to make special contracts with informers became a law. It was Sawyer who proposed and rushed the bill through the Senate. It was Butler who rushed it through the House. It was Butler who was the attorney of the informer. It was Butler who secured Sawyer's appointment as Assistant Secretary, and it was very natural that Mr. Dodge should prefer paying \$271,000 to having his case subjected to a new Secretary, who might be either Butler or Sawyer.

[From the NEW YORK JOURNAL OF COMMERCE, March 7, 1874.]

"They were fools for paying the money," says Mr. Wm. E. Dodge, speaking (before the Ways and Means Committee) of his own firm and their compromise with the Government, for alleged revenue frauds, by the payment of \$271,000. Men are apt to think thus poorly of themselves when they have parted with good money unnecessarily; especially if they have used it to buy off prosecution, or silence blackmailers, and find, after all, that it does not prevent a scandal. It would be impolite for ourselves to employ toward Phelps, Dodge & Co. the language which the head of the house is pleased to utter. They must be the best judges of the extent of the error which they have committed, in seeming to acknowledge the justice of the Government charges against them, by a compromise involving so large a sum. For our part, we will be courteous, and speak of it as a mistake. It is always a mistake for a man who is innocent of intentional wrong doing to acknowledge, under threats or pressure, that he is guilty of it. Better impoverishment, or imprisonment, or any privation or suffering, than such a stultification. It is impossible for a man who commits that folly not to lose some of his self-respect—one of the greatest of earthly possessions; and he certainly



diminishes, if he does not wholly forfeit the respect of his friends and neighbors when his timid yielding becomes known. When we first heard of the accusations against Phelps, Dodge & Co. we advised them to rest upon their innocence and contest with the Government; and, after the settlement was announced, we deplored an act which appeared on its face to give some color to the charges. The sequel shows that our advice, if followed, would probably have saved to the firm their money. The firm seems to have been stunned and unnerved by the threats of Jayne and his accomplices. Mr. Dodge says the accusations struck him like a "thunderbolt," and elsewhere compares them to "a pistol held at the ear; it was money or ruin." In such cases the real courage of a man is tried. Considering the tremendous enginery of oppression wielded by the revenue service, it is not in the least surprising that Phelps, Dodge & Co. abandoned their true defence and made a weak surrender. We wish to judge them most kindly, and to regard them as the victims of a wicked terrorism and unparalleled outrage. A great many other men in the world would have succumbed, terror stricken, to such fearful odds. But there are—though these are rare specimens—men who, mighty in their conscious innocence of wrong, would never—never—have paid the Government one dollar in compromise for frauds never committed. They would have put their fortunes at stake, if need be, and would have triumphed at the close. "(We) they were fools for paying the money," says Mr. Dodge. We advised them to go into court and brave the consequences. So did Secretary Boutwell, as we now learn from Mr. Dodge; and he adds: "If (we) they had followed the Secretary's advice (we) they probably would not have paid \$271,900." Mr. Jayne himself now admits, virtually, that a judicial prosecution would have failed. He told the Committee on Thursday that "if he had known that there had been any overpayment on the part of Phelps, Dodge & Co. he would have obtained their release. He did not know that there had been more over valuation than under valuation, or he would not have proceeded against them." Exactly; and where could Phelps, Dodge & Co. prove this fact—one of the most convincing evidences of their innocence—except in a court of justice? To that tribunal they should have appealed; and had they done so boldly, we believe that the prosecution would have been glad to back out, and the case never would have gone to trial; and, if it had been tried, that Phelps, Dodge & Co. would have been

honorably acquitted. The trial, had it taken place, would have brought the pettifoggery, sneaking course of the Government toward merchants into just contempt, and would have done much, by arousing public indignation, to break up the infamous practice of which the importers complain. Phelps, Dodge & Co. would have saved their money had they taken our advice—now seconded, as we learn, by Secretary Boutwell; and, far more than this, they would have avoided the "appearance of evil," which inevitably attaches to a compromise such as they finally made.

The moral of their ease should sink deep into the hearts of all merchants who are liable in their business to become victims of official blackmailing. We are not without hope that the exposure of the revenue abuses afforded by Mr. Dodge in his frank statement before the Committee will contribute to the breaking up of the atrocious system, and that hereafter honest importers will not be frightened into the payment of compromises or hush money. If they do commit that folly after this warning, they must not be surprised if the public interpret it to be a virtual admission of guilt.

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#### CUSTOM HOUSE ABUSES.

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[From the SPRINGFIELD REPUBLICAN, March 14, 1874.]

The hearing before the Ways and Means Committee in regard to Custom House abuses, to which the merchants and the Government officials have been the principal parties, has closed, and we shall hear nothing more of it till the report is presented in Congress. Judge Noah Davis may, perhaps, be allowed to come forward and tell the Phelps and Dodge story over again, as he is said to be anxious to do, in order to defend himself from the imputations of Jayne and Bliss, but we are already in possession of the vital facts. Let us just run them over and get them into a portable form.

The investigation was no sooner opened than Jayne sprang to the front. He was anxious to go through the cases of these thievish merchants, and displayed an immense book, wherein their evil deeds were written. His appearance and audacity produced a striking impression upon the Committee. But it is an extraordinary fact that, at the subsequent hearings, when the merchants were present, Jayne, after his personal denuncia-

tions had been checked and suppressed, sunk into an insignificant witness for the Government, and finally turned State's evidence. Jayne seems to have been, in short, a perfect specimen of the bully—valiant and swaggering as long as such arts availed, a treacherous and whining coward when put to the test. If he found he could not squeeze blood from a turnip, he was content to munch it in a corner. His testimony confirms what we said the other day, about the necessity of liberal "division." Out of the \$328,000 which has fallen to his share, only \$140,000 has stuck in his own pocket. Somebody in the Treasury Department, who, "like himself, had information 'concerning a certain house,' he had been compelled to share with. He paid Butler a large fee in the Phelps & Dodge case, and \$1,500 for counsel in other cases. He charged that, in 53 out of 61 cases that had come within his knowledge, there had been collusion with customs officers. In his last hearing this Jayne appealed to the Committee to do something to reform the morals of the country, and closed with the assurance that "while thieves were in office he looked upon the seizure of books as no better than highway robbery." In short, the testimony of Jayne is precisely that of an ignorant, vulgar bully, who comes on to the stand feeling that he can carry all before him, and whose testimony either isn't to the point or collapses upon the slightest examination.

The testimony of the merchants was that of more cultured men. The Boston representatives presented the obvious reasons in favor of the reforms which we outlined a few days ago, but no one showed so much personal acquaintance with the hardships of unjust penalties as Jackson S. Schultz of New York. He assumed that it was for the interest of the great body of honest merchants to have the revenue law enforced strictly, and went through with the process of importing from beginning to end. Mr. Schultz alleged that the regulations of the Treasury on importations are voluminous and inaccessible, and explained the ease with which they may be innocently violated.

District Attorney George Bliss was the chief witness in rebuttal, and we must confess to being struck with the weakness of his plea for the Custom House practices. It has been privately understood from Mr. Bliss that he has positive proof of intentional fraud on the part of Phelps & Dodge. He did not produce it. He declared that the Chamber of Commerce resolutions were got up by outside parties to subserve personal interests, but presented no proof of it. He defended moie-

ties on the ground of their antiquity, and declared that all compromises were ratified by the Secretary of the Treasury. He was apparently in favor of establishing a sliding scale of forfeitures, so that fraud in one item, if it were a large invoice, should not forfeit the whole of it, but should forfeit more than the single item, which oftentimes would not carry a sufficient penalty. But, as a defence, Mr. Bliss's effort was rather tame, especially after the closing argument by Messrs. Dodge and Schultz.

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[INDIANAPOLIS (INDIANA) NEWS, March 17, 1874.]

Last winter, when the firm of Phelps, Dodge & Co., of New York, were accused of violations of the revenue law, and compromised the cases by paying nearly three hundred thousand dollars, we were inclined, in common with many others, to think that they must be guilty or they would not consent to pay such an enormous sum. Later light has shown that we did them injustice—injustice so great that we should be unworthy of the name of fair minded journalists if we did not acknowledge it. They were then so hemmed in by spies and informers, so threatened by plunderers and leeches, that they could not do otherwise, being human. The firm, one of the oldest in the country, and one of unblemished reputation, were suddenly accused of having defrauded the Government by the use of false invoices. They were thunder stricken at the accusation, having paid the Government millions of dollars in duties, without the least insinuation of irregularity, to say nothing of a premeditated attempt to steal. Their books and papers were put at the service of the revenue authorities, headed by special informer Jayne, a clerk who had garbled accounts coming under his inspection, for the purpose of falsely accusing them and profiting himself. It is unnecessary to relate the details. They were dragged into court on a charge of having cheated the Government out of \$1,600: they were told by the attorney for the informers—Gen. Benjamin F. Butler—that he had evidence that would convict them and would forfeit the whole invoice, worth over a million of dollars. Beset by spies, attacked by confidential employes, badgered by a long array of counsel, and harrowed by the fear of immense pecuniary loss and damage to reputation, it is not strange that when the authorities offered to compromise for \$271,000, they accepted the offer, in order to save further trouble. Who would not have done it under the circumstances, when the law is so com-

plicated that even the most honest man may unwittingly violate it? Though conscious of rectitude and honesty, they paid the money rather than to take it into the courts, at the risk of losing more money and gaining damaging notoriety. Now they come forward and show all the circumstances, and no one can read Mr. Dodge's statement and not believe it, unless he be a man who has lost all faith in his fellows, except in their total and unqualified badness.

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[From the TRENTON (N. J.) DAILY PUBLIC  
OPINION.]

It is due to the truth of history, as well as to the fair fame of one of the most honorable importing mercantile firms of New York city—the house of Phelps, Dodge & Co.—that Mr. William E. Dodge should be heard in his defence against the charge that the house had defrauded the revenue, and in explanation of the reasons that induced them to yield to the unjust demands of the Government, at the instigation of the informer Jayne, and under the terrorism to which they were subjected by high officials. We have not space for the whole of his vindication before the Committee of Ways and Means, but we'll try and give its substance as briefly as may be. The whole transaction on the part of the Government was a crime of the highest magnitude against the rights and reputation of the private citizen.

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[From the DUBUQUE (IOWA) TELEGRAM, March  
14, 1874.]

It came like a thunder clap, the announcement last year that the pious, philanthropic William E. Dodge and his partners had been detected in systematic frauds upon the revenue. Can it be possible, everybody asked, that this long established firm, claiming to be the very soul of honor and integrity, has been dispensing charities with one hand and stealing from the Government with the other?

And when the announcement came that they had compromised, people accepted as true the charges made by Jayne & Co., and began to doubt whether there really was any fairness, integrity and honor in this world. It was a severe shock to our belief in commercial honor and honesty when such a house as Phelps, Dodge & Co., should pay over \$200,000 and compromise a government suit against them for alleged fraud. In view of the above facts, judge with what a feeling of satisfaction and relief we have read Mr. Dodge's speech

of vindication before the Ways and Means Committee at Washington.

More satisfactory reading has not been spread before New Yorkers for a long time. It restores confidence in human nature, and renders, if possible, still more odious the Jayne gang. William E. Dodge has ever been first and foremost in philanthropic and religious enterprise in New York, and you may be sure that it is a matter of no little gratification to his fellow citizens to thus have his name cleared of the foul stain which Jayne endeavored to fix upon it. All of the men who have profited by this moiety system here in New York will have hard work to hold up their heads in society in future. They will undoubtedly always be pointed out as the moiety men.

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DODGE & BUTLER.

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[From the N. Y. WORLD, March 21, 1874.]

The dullest and most devout of the Republican party journals have been startled from their usual sleepy intonation of the established responses in the established party litany by the evidence which Mr. William E. Dodge, of New York, has just been giving before the Congressional Committee of investigation into the working of the laws which set a premium upon human baseness in behalf of the revenue laws. Mr. William E. Dodge is a man long high in the confidence and in the councils of the Republican party. He is a very rich man, a very religious man after his own lights, a very respectable man, not only from the point of view of Mr. Carlyle's Scotch juryman, who defined respectability to be the keeping of a horse and gig, but from the average civilized point of view. When it was announced many months ago that the firm of which Mr. William E. Dodge is the head had been charged with frauds upon the revenue, and that the charges had been compromised by the payment to the Government of more than a quarter of a million of dollars, a thrill of amazement and horror ran through those sections of the community with which Mr. Dodge had long been connected politically, commercially, and socially. At first those sections of the community refused to believe the story. The evidence, however, of a check for the full amount of the alleged compromise money, drawn by Phelps, Dodge & Co. in favor of the Government and paid from the funds of the firm, could not always be gainsaid. It was at last generally though reluctantly admitted, even by the Union Leaguers,

that Phelps, Dodge & Co. must have fallen from grace in a moment of sore temptation. That Phelps, Dodge & Co. could possibly have been "blackmailed" out of such an amount of money by a Republican Government the public utterly refused to believe.

But now we have the whole story deliberately and clearly told in a perfectly responsible manner before a committee of Congress. The positive evidence of Mr. William E. Dodge has been supplemented by the testimony of ex-District Attorney Noah Davis, and by the negative evidence of Jayne, who testifies that he received and put into his own pocket more than the whole salary of a whole Presidential term for his services in securing Phelps, Dodge & Co. into paying over to the Government the great sum of money before mentioned as the price of his forbearance to push proceedings against them for alleged frauds, based upon an error amounting to something less than one twentieth of his own gains in their case. It no longer admits of a doubt that Phelps, Dodge & Co. were robbed (that is the exact English word to describe the process) of a small fortune by a conspiracy of petty official rogues with leading Washington politicians. Mr. Dodge now admits that his submission to this robbery was discreditable to himself and to his house. No man, we suppose, can ever look back upon anything done by him under an ignoble duress, physical or moral, with satisfaction. Mr. Dodge is obviously exasperated by the reflection, which has come to him rather late in the day, that he never ought to have succumbed to the menaces of this gang of official blackmailers. He gives a great many excuses for his weakness in the matter. The sum of them all is that he and his partners thought it better to be robbed at once, and have done with it, of a sum of money, definite though enormous, than to subject themselves to prosecution before courts in whose justice they distinctly imply that they had no confidence, and against witnesses of whose unscrupulousness they unfortunately could have no rational doubt. Of the most extravagance of the terrorism to which these respectable merchants paid the most monstrous homage we may have some notion when we find General Butler, the head and front of the system, openly lauding his tool and creature Jayne, as he did the other day, for the "magnanimity" displayed by him in a certain case in which he "destroyed certain letters" found by him among the papers of a firm, which letters related to a "woman scrape." The time has been in the history of this country when a man who had so much as dared to hint at his intention of using the

letters of a woman as a means of coercing a man into the payment of money would have been caught by the first dozen male persons he addressed in that fashion and ducked to death in the nearest horse pond. Now we have the leader of the Republican party in Congress and the master of the Republican President, openly commending a spy for his abstinence from this infamy! Of course there are hundreds of thousands of men calling themselves Republicans who will be nauseated by this revelation of the moral and social rotteness of their chieftains. Of course there are hundreds of thousands of men calling themselves Republicans who will revolt in honest indignation at the treatment to which Mr. William E. Dodge testifies that he and his firm were subjected. Of course Mr. William E. Dodge himself, now that he has made up his mind at last to reveal the degradation inflicted upon him, will be ready to denounce General Butler and the other real authors of that degradation as sternly as the wretched clerk whom they suborned to betray and to calumniate him, and as the vulgar informer who received for himself and for his principals the shameful wages won through that treason and that calumny. But there are interests involved in this matter wider, deeper, and more important than the pecuniary and the personal interests of Mr. Dodge and of Mr. Dodge's partners. The outrages of which Mr. Dodge is now denouncing the extent and the intensity, would never for a moment have been possible had not the public sentiment and the legislation of this country first been profoundly debauched. The basis of all these outrages was the flagrant violation of the principles of the Constitution by the Republican majority in Congress legislating away the sacred muniments and safeguards of American liberty. The rights of persons and the rights of property were alike violated by the satellites of General Butler and the Treasury ring in the case of Mr. William E. Dodge. But had not Mr. William E. Dodge himself invited these violations in the case not of one but of thousands of his fellow citizens during the civil war? Who made General Butler? Who invested this corrupt and unscrupulous politician with the power to suggest, to support, to apologize for these violations of the rights of persons and of property? Henry Ward Beecher helped make him when at the Fifth Avenue Hotel he nominated Butler for the Presidency. Those Republicans made him who devoted themselves for years to the wicked work of praising as patriotism and exalting as virtue the most lawless, brutal, and dishonest measures of men like General But-



ler. General Butler himself was hailed by them as a deliverer and a champion of freedom when he came to this very city of New York, in 1863, armed not with legal but with illegal authority, to treat the fellow citizens of Mr. William E. Dodge as insolently, as brutally, as basely as Mr. William E. Dodge in the fulness of time was destined to be treated by him. Now that they are protesting with a tardy courage against the application to themselves of the violence which they applauded when it was exercised upon others, it will be well for these gentlemen, and well, too, for the country at large to remember how eternally true it is that they who "sow the wind must reap the whirlwind."

### THE TREASURY SPY SYSTEM.

[From the Correspondence of the NEW YORK WORLD,  
March 23, 1874.]

WASHINGTON, *Saturday, March 21.*

"The nearer you will get to it the less you will like it."

Such were the prophetic words uttered twenty years ago by Marshal Niel to the combined armies of France and England then laying siege to the Malakoff. It may well be said of the moiety investigation that the nearer we get to the end the less it is liked by those whom it concerns. And in these are of course included not only the administration but the very party that made the scandal possible. When, a month ago, the officious Jayne went before the Committee, not only for a certificate of character but for a vote of thanks for the eminent services he had rendered, he little thought of his own friends that lived in glass houses; his jaundiced eye only saw his enemies. It seems now that he as well as most of his intimate friends will come in for the "lashings," and with the exception of his enemy, Judge Noah Davis, all the rest are likely to triumph. The fact is, Jayne felt very much like a London quack doctor, who advertises as the "silent friend," and who feels sure that none of his victims will expose him, as, naturally, they would expose themselves. Jayne at first had his full say. He made a clean sweep, and called the New York merchants a set of infernal thieves, and the deputations of gentlemen from New York, Philadelphia, and Baltimore, with Jackson Schultz at their head, the representatives of infernal thieves. To his great disgust and astonishment neither the "infernal thieves" nor their "representatives" took kindly to Mr. Jayne's admonition, but actually

made certain exposures, which put quite a different complexion on the whole business in hand. First came Mr. Dodge, and told the truth, viz., that he was more or less bewildered, frightened and coerced into a squeeze of \$271,000. This old gentlemen did even complain, to the disgust of Jayne, that his clerks were debauched into spies; that he and his partners were threatened with Ludlow Street Jail because they committed the great crime of burning up old letters at the end of the year without asking the special agent's leave. The Phelps-Dodge crime was further fully proven by this very investigation, and resulted in the following succinct resume, viz:

*First*—Subscribing to incorrect or even false oaths by the score.

*Second*—Importing \$17,000,000 goods.

*Third*—Paying thereon \$400,000 duties.

*Fourth*—Undervaluing \$6,568.

*Fifth*—Cheating Government out of \$1,658 78 duties; and

*Sixth*—Being obliged to pay \$271,000 fine.

This terrible accusation looks more like a whitewash than anything that could possibly have been done for the House by even Noah Davis. Mr. Jayne had no idea that Mr. Dodge would dare to face the music, but he did, which was no doubt very unlaudsomely of him. Next came the Boston people with a long list of complaints and last came the terrible Jackson S. Schultz and spoke, not as a man that had been "struck" but as a merchant and bank director who clearly finds it to his interest and to the interest of the banking and financial system of the country in general, and New York in particular, that merchants should no longer be exposed to be "struck." What seemed to sink deepest into the minds of the Committee was Mr. Schultz's statement that a firm's credit, be it ever so good, would be immediately tainted if it was noised about that it was "struck" by the Custom House. He did not disguise the fact that bills of such firms current yesterday only as a greenback, would, if tainted by a Custom House implication, be refused discount accommodation the following day. This simple statement did more damage to the Jayne system and explained the mysterious settlements more effectually than all that was said either before or after his evidence. Mr. Jayne being left in a damaged condition, somehow became all at once more genial to the mercantile community. True, he by no means changed his mind about the "infernal thieves" and their representatives, but in his

cross-examination he sent a thunderbolt into the camp, and told the Committee that there are other "infernal thieves" somewhere else who are in the direct employ of the Custom House, and whom he could not get removed, and on whose account he "quit." By a single sentence he implicated some three score clerks, against whose names he had put a red mark. Unconsciously he had also to drag in his great protector, General Butler, who was his counsel, and who got a share of the "swag." Jayne's statements left no alternative to the Committee, and they invited the Collector, Naval Officer, and Surveyor of New York to come and give evidence. This invitation was very much like the farmer's wife's invitation to the ducks: "Ducky, ducky, come to be killed." They wisely refused. (I mean the customs officials and not the ducks.) Not so did the redoubtable George Bliss, who was not invited at all. He went before the Committee and declared he knew more about seizures and the law than all of them put together. "Decoy" Bliss had a little account to settle with his predecessor, and he took the opportunity to go for him. I need not repeat his evidence, as it is by this time too well known. This of course brought the said predecessor, now Chief Justice of the State of New York, on the stand. Now, Judge Davis not only wanted to be even with Bliss, Jayne and Company, but he had an account more than a year old to settle with Senator Conkling, and he did it very neatly indeed.

This is in reality the latest sensation. It may be as well to give the precise words of Judge Davis about the Conkling account.

"He was particularly asked and gave a minute account concerning the interview which took place at the Custom House between himself and the officers of the customs in relation to the compromise of the Phelps, Dodge & Co. case on December 31. He had given a statement of the same interview yesterday, omitting, however, to mention the name of one person present at that interview. He was requested to give the names of all who were present, and he stated them as the Collector, General Arthur; the Naval Officer, Mr. Ladin; the Surveyor, Mr. Cornell; the Special Agent, Mr. Jayne, and Senator Conkling. As to the latter, he expressed his belief, as he had done yesterday, that Mr. Conkling was there, not by design, but by accident, and that his presence had no reference to the case. On being pressed, however, by the Committee to relate substantially what occurred at that interview, he gave the substance of the conversation which took place, and

which was in reference to the questions whether the decisions of the courts were, that in cases of false entries the whole invoice was forfeited or only the particular items that were tainted with fraud, and on that point Judge Davis says that Senator Conkling took the statute in his hands, read it, and gave it as his opinion that it was beyond all doubt that the whole invoice was forfeited, and recommended that in the Phelps, Dodge & Co. case a suit for the forfeiture of the entire invoice should be directed.

No sooner was this statement of Judge Davis known when the strange "coincidence" of the elder Weller upsetting a coach-load of voters on the precise spot indicated to him the day previous was on everybody's lips who had ever read "Pickwick."

Having come down rather heavily on the Senator's "bow windows," Judge Davis in the afternoon and at the close very kindly offered quite gratis the following eye liniment to the Senator whose eyes he had so handsomely painted blue:

At the close of his statement he referred again to the interview at the Custom House, at which Senator Conkling was present, and said that he had not the slightest idea, and certainly had no knowledge and no reason to suppose, that Senator Conkling was in any way connected with the Phelps, Dodge & Co. matter. He did not wish to be understood as conveying in any degree the remotest imputation of the kind. He wanted to exclude that idea entirely, as he should be very sorry to make a suggestion in regard to any member of either house that might be warped into the idea that he wished to convey an unfavorable impression.

The worst of it is that the liniment smarts. Judge Davis dragged in the following words: He said he did not mean to imply anything detrimental to any members in "either house" of being in any way connected with the Phelps-Dodge case. Now, the facts were but too well established that General Butler, a member of the House, was rather deeply connected with the case, and putting a gratuitous whitewash on Butler, he only the more damaged Senator Conkling. In the meantime imagine the ire, the lofty wrath of the great Barbo Rosa Senator. The halls of the Senate will resound in good time with the indignation of the Senator. For three hours at least will the otherwise handsome features of the Adonis of the Senate be distorted when the great speech on the subject now being investigated is delivered by him. Yet the strange coincidence will remain a standing marvel.



A CUSTOM HOUSE SLANDER DIS-  
PROVED.

[From the NEW YORK TRIBUNE, March 21, 1874.]

Since the full and satisfactory explanation of the compromised case of Phelps, Dodge & Co., given before the Ways and Means Committee by the Hon. W. E. Dodge, there have been charges that Phelps, Dodge & Co. sent their Custom House clerk away, and have kept him out of sight since the beginning of their troubles to prevent damaging disclosures from him. A *Tribune* reporter yesterday obtained the following statement upon this point from D. W. James, of the firm of Phelps, Dodge & Co. The gentleman referred to, Mr. P. X. Moore, had been the Custom House clerk of the firm for over twenty years. More than a month before Phelps, Dodge & Co. were "struck" by Jayne, Mr. Moore had a shock of paralysis. Marked weakness and serious prostration followed. Mr. Moore was visited by one of the members of the firm, who also conversed with Moore's physician. The latter said that a voyage to Europe, or some such step, was necessary for the patient, whose life could not be preserved if he should remain here. The long and faithful service of Mr. Moore was an appeal to the house to aid him, and it was determined to send him to Europe at the expense of the firm. Finally, passage was engaged for himself and wife on a Wednesday steamer of the Williams & Guion line, but on the day when that steamer sailed he was too sick to be moved, and the time of departure was changed to a Saturday steamer. Before that sailed Jayne had opened fire. In the course of a consultation of the members of the firm, held at the house of Mr. Dodge, the question of sending away the Custom House clerk under these circumstances was considered. It was understood that his departure at that time would give a pretext for suspicion. But the man's life was at stake (so said his physician), and Mr. Moore went away as had been arranged. He returned from Europe last Summer, still too feeble for work, at least in hot weather. Accordingly he spent the heated term at the home of his family in Massachusetts, near Cape Cod. This was the circumstance on which is based the malicious statement that "on his return he was only one day in their office, when he disappeared again." He is now at work for the house, but the effects of the paralytic shock still re-

main, so that he is unable to perform unremitting or severe labor. He can be seen at their office almost any day, and, consequently, has not "disappeared." Anticipating that Jayne and his crew would find a handle for lying innuendoes in the departure of Mr. Moore, Phelps, Dodge & Co. procured and now preserve a certificate from Moore's physician, showing the immediate necessity of his European journey.\*

Mr. James said that the house did not care to divert attention from the great question of the injustice of the moiety system, and the wrongs which merchants had suffered under it, by publishing answers to all the mean flings and trifling insinuations which might be made by the enemies of the firm. At the same time he declared that the firm possessed full evidence in documents and in figures to confirm every least statement which Mr. Dodge had made.

## TURKEY AND THE UNITED STATES.

[Correspondence WASHINGTON CAPITAL, March, 1874.]

To Sahib, Editor of THE CAPITAL:

As I predicted in my last letter to THE CAPITAL, the most interesting topic this week here is the Ways and Means Committee investigation on the moiety system and seizure outrages. I naturally refrain to dwell on a subject, I mean the investigation part of it, so much better known in Washington. But prominent in the great sea of trouble the case of Phelps, Dodge & Co. stands out like some gigantic monument of hardship and oppression, against which the law of 1863 has hurled all its fiery shafts. Whether Mr. Jayne has only carried out a bad law to the letter or not is now by no means the question. Mr. Jayne is not on trial more than the merchants. But it would not at all be inappropriate to use Mr. Jayne's very emphatic expression on Tuesday last. It is the infernal thief, the law of 1863, and its representative, that is on trial. Now what I am about to relate is not, to use a Byronic expression, a poetic fable or Parsec anecdote, but simply the truth, that can be verified.

In relating a case of singular oppression that happened in 1832, I will give names and places, and compare the story, when complete, with that of Phelps, Dodge & Co. I respectfully invite not only members of Con-

\* Mr. Moore has since died from the effects of this illness.

gress in general, but the members of the Ways and Means Committee in particular to give full attention to my narrative.

In 1864 I met Mr. Joseph Comandi, the great banker of Constantinople, in Paris. I had business relations with him and became quite intimate. His father, Israel Comandi, who was also a rich banker and jeweller to the Sultan, was, in 1832, stripped of every vestige of property, bastinadoed until he became a physical wreck, and died in exile, a poor, broken down wretch. The history of the elder Comandi's misfortunes is as follows: Israel Comandi, a wealthy banker and jeweller in Constantinople, had, in 1831-2, a young man in his employ, born in Greece; both Comandi and his clerk were Jews. The young clerk proved very serviceable and intelligent; old Comandi, who was a kind sort of a man, made it a rule to invite his clerks who were his co-religionists to his house during the Passover feast and on other holidays. It was on one of these occasions that the young Greek clerk took a liking to Comandi's third daughter, a girl of about fourteen or fifteen, and actually asked the old banker to give her in marriage to him. The rich banker only laughed at such a proposal, and told the young man brusquely to attend to the books and jewels. From that date the rascally clerk brooded revenge; and he soon found an occasion to carry it out.

In balancing and arranging Comandi's books he found that about a year previous Comandi had furnished the Sultan (who, by the bye, was the father of the present Sultan and of Abdel Medjid) an aigrette made of numerous large brilliants, the cost of which was forty thousand Turkish pounds, or some \$200,000. He found that Comandi had rendered an invoice to the grand vizier and sworn to its correctness, viz.: that the aigrette contained twelve brilliants weighing ten carats each, twenty-four weighing five carats each, and so on. That Comandi had charged the twelve larger diamonds so much a piece on the assumption of being ten carat brilliants. Then this villainous young rascal found that, although the twelve large brilliants weighed in the aggregate more than one hundred and twenty carats, yet there were some among the lot that only weighed nine and a half carats and two only weighed nine carats each. The truth was Comandi had to match size and color, and did not bother his head whether one or two stones weighed less than exactly ten carats, as long as the whole twelve weighed one hundred and twenty carats. Having these facts before him, the first thing the clerk did was exactly what

Harvey did at Phelps. Dodge & Co.'s forty years later—he stole his master's papers.

The next thing he did was not to go to a special agent, but take the "Turban;" that is, become a Mohammedan; that was important, and gave him protection against a Jew, as in those happy days the oath of a Mohammedan against a Jew was admissible, while the testimony of a Jew against a Turk was inadmissible.

He then went to his highness, the grand vizier, and exposed his master of having cheated the sublime porte. Unfortunately the grand vizier owed Comandi money, and he naturally thought it would be but a fair way to pay his own debt by despoiling Comandi.

It was in vain that Comandi pleaded that the brilliants that weighed more than ten carats each overbalanced by far in value the shortcomings of those that only weighed nine and a half or nine carats. It was also vain for poor Comandi to ask that the twelve stones should be weighed altogether; that then more than one hundred and twenty carats would be found. No! The wise grand vizier must have been the venerable inventor of the United States customs law of 1863. He said: "You testified that your invoice is in every respect true. You stated there were twelve stones weighing ten carats each, and we find three of them weighing, one nine and a half, and two only nine carats each. We have nothing to do with those that overweigh: the business is with those that underweigh."

To make this true narrative short suffice it to say, Israel Comandi was bastinadoed on the bare soles of his feet, his whole vast fortune, houses and all, was confiscated, and the plunder was divided between the Sultan's treasury and the informer. The poor family was driven into exile. Old Comandi died soon after from the effects of the bastinado, and it was not until the mild reign of Abdel Medjid began that the English and French ambassadors insisted on justice being done the poor exiled family. This act of restitution, I believe was due to the late Ali Pasha.

Enough. The Comandis, particularly Joseph, the eldest son of the victim of this awful conspiracy, are now rich and powerful. This happened in Turkey in 1832.

Now turn to the United States. In 1872 the house of Phelps, Dodge & Co. was robbed of certain papers by an informer in their employ. These papers proved that the Government in five years lost \$1,664. Fortwith books and papers were seized, and the mild law of 1863 confiscated \$271,000 of the firm's money. In vain did these people

plead that they overpaid duties. The United States Government, like the grand vizier, only looked at the underpay.

True, Mr. William E. Dodge was not bastinadoed on the bare soles of his feet as was Comandi. But all the families of the great house of Phelps, Dodge & Co. have received so many bastinadoes in all manner of shape and ways, execept with actual bamboo sticks, that it may well be questioned whether Mr.

Comandi's bastinado was not the more merciful.

I will pursue the *simile* no further. I leave it for the American people to do, if they can do so without blnsling.

I remain your sincere friend,

ADENSEY CURIOSIBHOY.

Parsee Merchant of Bombay.

# THE MERCHANTS OF NEW YORK IN COUNCIL.

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PUBLIC MEETING, MARCH 20TH, 1874, OF THE MERCHANTS OF  
NEW YORK IN PROTEST AGAINST THE PROCEEDINGS OF  
U. S. REVENUE OFFICIALS.

On the return from Washington of the Special Committee of merchants and citizens, appointed by the New York Chamber of Commerce to represent it in the hearing relative to moieties, seizures and revenue outrages, before the Committee of Ways and Means of the House of Representatives, a special meeting of merchants was convened at Steinway Hall, March 20th, to hear the report of the said Chamber of Commerce Committee.

The floor of the Hall was well filled, and a very large proportion of the audience consisted of merchants and clerks. Deep interest was manifested in the proceedings, and every countenance on the platform and on the floor gave evidence that the subject under consideration was one with which all were familiar, and to which they had given much and earnest thought. Among the prominent gentlemen present were:

Cyrus W. Field, William M. Vermilye, Leopold Bierwerth, J. A. Stevens, Jr., James N. Constable, S. B. Ruggles, W. B. Barbour, Daniel C. Robbins, Gustav Schwab, A. A. Low, L. E. Chittenden, Morris K. Jessup, E. C. Codwin, E. F. Shepard, George H. Lane, S. B. Chittenden, Joseph Seligman, William H. Fogg, Jackson S. Schultz, Ambrose Snow, Samuel Sloan, Joseph Choate, Oliver Hoyt, Jonathan Sturges, Theodore Roosevelt, Jas. S. T. Stranahan, Charles E. Beebee, Charles T. Landen, William Watson, James M. Roosevelt, J. P. Wetherill, William J. Peake, John H. Hall, E. Obelerman, E. Greeff, A. Schlesinger, Adolph Rusch, Henry Winsor, Joseph Grubb, Charles Mali, Henry Sanger, E. Hartt, E. Luckmeyer, James S. Harding.

Messrs. Henry Winsor, Joseph Grubb, J. P. Wetherill and James S. Harding represented the Philadelphia Board of Trade.

The following further report of the proceedings of this meeting are copied from the columns of the *New York Tribune* of March 21, 1874:

The meeting was called to order at eight P. M. by George Opdyke, the First Vice-President of the Chamber of Commerce. He briefly stated the object for which the meeting had been called, and introduced John Austin

Stevens, who read the report of the Special Committee of the Chamber of Commerce, the resolution proposed for the consideration of the meeting, and the amended Revenue Law proposed by the Joint Committees from the New York, Boston and Philadelphia Chambers of Commerce for presentation to Congress. The resolution was unanimously adopted.

The Chairman then introduced Joseph H. Choate as an eminent lawyer, who, in his professional practice, had had opportunities of seeing some of the evils of which the merchants complained. His close, incisive arguments were listened to with fixed attention, and the speaker was interrupted with frequent and loud applause. His references to the "means of extortion which have been placed in the hands of corrupt Custom House officials and more corrupt informers," and his advice to the merchants to refuse to compromise, and to demand a trial by jury met with a prompt response. He argued strongly against the moiety system, by which the plunder taken from the merchants was divided not only between the Government and the Custom House officers, but so that a part found its way into the pockets of members of Congress, and, hence, shut off redress from the merchant, who might appeal to the Secretary of the Treasury. He demanded that the law giving the right of search and seizure of private papers be stricken from the Statute Book, and that nothing be put in its place. In England a man's house, he said, is his castle, into which the king cannot enter. If that was a good law in England before the American Revolution, it is good law for free America.

Thomas Barbour, the story of whose wrongs and of whose bold fight against wrongs has been told in *The Tribune*, was next introduced. Referring to that statement, as published, he said that it was true—every word of it—and he could prove it.

The Chairman then introduced the Chairman of the Committee on Revenue Reform, "whose courage and ability had done much to create the feeling which pervaded the community on this subject." Jackson S. Schultz was received with tremendous applause, and his address was interrupted by frequent tokens of enthusiastic approval. The words fell hot from his lips, and the language in which he denounced the "hounds of the Custom House," and their confederates in Congress, was not chosen for its inoffensive character. As he spoke of "Butler, that honest gentleman," groans and hisses were heard in all parts of the house. He had been attending so much to other people's business recently, he said, and had been acting the spy himself so much that he was able to tell more about the affairs of some merchants than they knew themselves. His explanation of the reason for Mr. Clafin's satisfaction with the Custom House management was received with laughter. Mr. Barbour, who had "more courage and backbone than

any other man within his knowledge," had fought the Custom House and beaten it, and yet advised all merchants so situated to settle. If Mr. Dodge were present he would probably advise to fight and not to settle. Which ever course a man takes when he is undergoing "the squeezing process," he will be so hardly used that he will think any other course would have been better. Mr. Schultz resumed his seat amid stamping of feet and cheers.

S. B. Chittenden spoke vigorously for a few moments. The only remedy, he thought, was to divorce revenue appointments from politics. Joseph C. Grubb, of Philadelphia, followed. He considered the moiety system one of unmitigated plunder. John P. Wetherill, of Philadelphia, Mr. Dinsmore, and others made brief addresses. The meeting closed about eleven P. M.



# COMMENTS OF THE PRESS,

(Continued.)

## PAY BACK THE MONEY.

[CHICAGO TRIBUNE, *March, 1874.*]

"Send back the money," cried William Lloyd Garrison to Daniel O'Connell and Ireland, when he discovered that Maryland slaveholders had been contributing to the Repeal Fund, with the evident intent of stopping O'Connell's mouth from uttering denunciations against their peculiar customs, which he had branded manstealing. "Send back the money," he reiterated, until the Green Isle listened to the demand. If that requisition was well put—and the moral sense of the world commended it when it was a matter simply between man and man, to be gauged by the state of the individual conscience—how much more so when it pertains to the honor of a nation and to the requirements of public justice in the treatment of the Government towards its subjects. If money be obtained by fraud, by blackmailing, by conspiracy, by one man from another, there is a remedy in the courts. There is no reasonable doubt that if a respectable firm in Chicago had been treated by any ring of unofficial persons as the firm of Phelps, Dodge & Co. have been treated by Government agents, just as surely as justice could be done in the courts of Chicago the perpetrators would be doing the State some creditable service in the Penitentiary at Joliet, instead of being examined by a Committee of Ways and Means at Springfield.

Paying back the money is the only way the Government of the United States can do justice to a firm that it has outrageously swindled, and save itself from the just imputation of a partnership with pirates. How this swindling and blackmailing has been done, and what are the links of the partnership, has been often told in THE TRIBUNE and many other papers of the land, and is being told day by day to a Committee examining into the operation of the law, and the action of the conspirators working under it. Before this Committee finish their work, let them examine ex-Secretary Boutwell, and ascertain what he knew of the

transaction at the time the thumb-screw was adjusted to these merchants. Did he, or did he not, know that their offence was merely technical? Was he then construing the law as a just arbiter or as a political ally of Benjamin Butler?

Pay back the money not only to Phelps, Dodge & Co., but to a number of other respectable firms who have been robbed by the same gang of conspirators. Purge out the blood-money from the Public Treasury, which seems to have become like the House of God in old Jerusalem, a den of thieves. Pay back the money! Let the public press demand this, and the people echo it, till, as in the salary grab, Congress be driven to do this act of simple justice. It may be that, as the political representatives have done every possible dishonorable thing to keep up the party, they may consent to do an honorable thing to save it. Pay back the money!

[From the ALBANY ARGUS, *March 24, 1874.*]

The robbery of Phelps, Dodge & Co. derives importance mainly from the illustration it affords of the manner in which the Federal Government treats honest and honorable citizens. The case illustrates in striking outline an obnoxious law and its odious enforcement, revealing at once the oppression which the statute permits, and the arbitrary despotism of the Administration, which does not scruple to avail itself of the advantages for extortion afforded by the law.

## SECRET HISTORY OF THE PHELPS-DODGE CASE.

[From the CHICAGO TRIBUNE, *March 27, 1874.*]

The testimony of Judge Noah Davis before the Ways and Means Committee gives the public, for the first time, an insight into the way in which one of our most famous firms, composed of men who have done more for their country than the whole tribe who black-

mailed them, came near being made our most infamous firm. Business men should read, mark, and inwardly digest the remarkable story. They can then decide whether or not they care to run the risk of being treated in the same way themselves.

The law requires that invoices of imported goods shall contain the cost and all the expenses of transportation. The latter proviso includes, of course, the expenses from the place where they were bought to the port whence they are shipped. The invoice must be verified by our Consul in the city where the goods are manufactured. Some of the invoices of the sheet tin imported by Phelps, Dodge & Co. were verified by our Consul in Liverpool (in violation of law, since no tin is manufactured in that city), and did not contain the cost of transportation from the place of manufacture to Liverpool. The error, on some millions of dollars' worth of imports, involved a loss to the Government of \$1,600. It was discovered through a clerk who had been discharged from the firm's employ. At the request of the Custom House authorities, Judge Davis, who was then United States District Attorney of New York, examined the statement laid before him by Jayne, and gave his opinion that the case ought to be examined. Jayne then took the books and papers of the firm. Dec. 30, 1872, George Bliss, Jr., was secretly sworn in as Davis' successor. On the same day Davis, ignorant that he was really out of office, was asked to attend a consultation at the Astor House between Jayne and the Phelps-Dodge counsel. The latter offered to pay \$150,000 for a settlement in full. This was declined. Jayne then stated that the articles actually affected by the error in the invoices were worth \$260,000. On the evening of Dec. 30, the firm agreed to pay this amount. They had previously appealed to Boutwell to save them from being blackmailed, and had received from that sapient statesman the reply that he would do nothing for them, because he regarded the interest of the Government and an importer as directly antagonistic, and thought that each ought to try to get all that was possible out of the other! An appeal to Grant got no response. To be sure, it had been urged in favor of his reelection that the financial interests of the country demanded it, and Phelps, Dodge & Co. had contributed \$20,000 to get him reelected, but he was safe for four years more, and the dupes must take care of themselves. So they yielded perforce. They could not fight longer. Their name was under a cloud. Their trade was crippled. Even in far off Singapore the charges against them had gained credence. On the morning of Dec.

31, Judge Davis, still ignorant that Bliss had stolen into his place, met the latter, told him that he was about to close up the Phelps-Dodge case that morning, and offered him half the fees, inasmuch as his official term would begin the next day. Bliss, moved by this generosity, blurted out the information that Davis had been duped. "I was told last night what took place at the Astor House," said he, "and I was at the Collector's house till a late hour, and I know it is not to be settled to-day." So there had been a secret meeting of the rogues to see whether they could not give the screw another turn and squeeze more blackmail out of their victims. Davis went to the Custom House and found there the Collector, Surveyor, Naval Officer, and Jayne. The buzzards had gathered over their prey. They questioned Davis about the law in the case, and he answered them, taking care to state at the outset that he would now accept no fees in the matter in any event. He told them no jury, unless especially advised by a judge, would give them a verdict. He afterwards advised Mr. Dodge to fight the case to the end. The cost of contest was too heavy, however. It was cheaper to submit to being swindled. The firm paid \$271,000 as a penalty for their English agent's ignorance of a technicality in our complex revenue laws—an ignorance that had cost the Government responsible for the complexity about \$1,600. A few days ago Mr. Dodge, when he testified before the Ways and Means Committee, almost lost control of himself when he told how a reputation gained by half a century's honest work had been dragged through the mire by Jayne and his gang. This spectacle of an old man crying over the irremediable wrong his Government had done him is not one to be proud of. Nor is the spectacle of the Treasury dividing the swag with the blackmailers a pleasant one. Phelps, Dodge & Co., are a shrewd firm, but they can scarcely consider their investment of \$20,000 in Grant's reelection, for the sake of protecting the country's commercial interests, a paying speculation.

#### WHY DID THEY COMPROMISE ?

[From the NEW YORK TRIBUNE, March 28, 1874.]

It long ago became evident that the case of Phelps, Dodge & Co. was to go on record as a *cause celebre* in our mercantile and financial history, and yet, notwithstanding all that has been said and written upon the subject, it is certain that, except for the facts that have been dragged to light within

the last few weeks, it would have been very difficult, if not wholly impossible, for the public to form any clear conception of its history and national importance. The circumstance that the great firm compromised and settled has been with many a stumbling block, inasmuch as it almost necessarily seemed to imply either a want of pluck on the one hand or else a lack of a full consciousness of innocence or absence of fraudulent intent on the other. It is, therefore, to this very point, viewed in the light of the new evidence, that we now propose to ask special attention; and we are very much mistaken if this part of the history, hitherto obscured or concealed, does not, when fully understood, constitute a cause of offence against the Government and all concerned in the prosecution, which the great general public will not be quick either to forget or forgive.

It will be remembered that the dishonest clerk, whose sense of patriotic obligation, so highly extolled by Jayne, did not develop except under the prospect of large pecuniary gains, took first his stolen papers to a law firm of this city of considerable repute and standing, but not concerned in Custom House or revenue business. The case as presented to them was not one of a client seeking protection of the law against oppression, of wrongs committed, property taken, character assailed or person injured and redress denied; but a shameless open proffer on the part of a penniless adventurer to share an opportunity for enrichment contingent on a violated trust, on condition of legal coöperation and assistance. By this firm the case was worked up at the beginning.

The next step was to communicate with B. G. Jayne; and although Mr. Jayne confessed before the Committee of Ways and Means that he knew the papers on which the case rested were stolen, yet he knew also that the place to be worked was rich, the nuggets great in prospective, and this for him was all sufficient.

For all ordinary cases, Mr. Jayne has undoubtedly full confidence in his own capacities; but in a case promising such unlimited plunder as this, ordinary instrumentalities could not be relied on. He accordingly looks about for a partner, and from the whole country selects the most crafty, the most unscrupulous, and, from a political point of view, the most influential with the President and the Secretary of the Treasury, in the person of General Butler. The ring thus formed is next enlarged by the necessary inclusion, as participants of the spoils, of the Collector, Naval Officer and Surveyor, and

later by the addition of the new District Attorney, George Bliss, whom a vision of two per cent. on one million seven hundred thousand dollars was enough to tempt to tireless exertion.

One would think that here was an array of agencies and instrumentalities, in the form of lawyers, high officials and detectives, amply sufficient to manage any case so monstrous, and yet so clear and palpable as this of Phelps, Dodge & Co. was claimed to be. But Judge Noah Davis, in his recent testimony, has lifted a curtain behind which not a few had previously thought that they saw significant figures dimly walking, and shows us a Senator of the United States, the special representative of the commercial emporium of the country, cheek by jowl at a night session with a detective, statute in hand, declaring that, as it was nominated in the bond, the pound of flesh could be lawfully taken. And if the curtain had been lifted a little higher the figure of another Senator of the United States would also doubtless have appeared, giving judgment to the same effect, and adding his influence to the agencies already enlisted to work the ruin and disgrace of one of the foremost mercantile houses of the country; and all for a motive which in the case of every one concerned, except Jayne, whose deeds it was to be expected would fully accord with his profession, embodied the very essence of all that was mean and contemptible. For, turn it and twist it as we may, the offence of Phelps, Dodge & Co., as the result of examination and re-examination, and by the confession and affidavit of the chief Government officials, comes down to an alleged loss to the customs of \$1,658—the utmost possible gain to the firm being at the same time measured by the relation which this sum in the gross stands to a payment of *ten millions* in duties, or as a percentage of advantage over the rest of the trade in a five years' import of over *forty millions*. And this fact being known at the time of the night Senatorial conference and before the settlement and compromise fully as well as it is known now, we are of necessity driven to the conclusion that the motive which induced Senators and Representatives of the United States, District Attorneys, independent but influential attorneys and detectives, to manifest such unusual energy, and to act so differently from what they do when Peter Schmidt or John Jones is accused of defrauding the revenue of many times sixteen hundred dollars, was simply and nakedly the desire for plunder. It was nothing to the people who lived in the coun-

try of Gadarenes that one of their own citizens had been reclaimed from innacy and made a healthful member of society, so long as the value of the hogs was imperilled. It was nothing to Roscoe Conkling, Matt Carpenter, B. F. Butler, Geo. Bliss, and the official representatives of the customs that the fair fame of the great mercantile interest of New York was sought to be struck down and aspersed through their foremost representative for an offence which every other civilized nation would have held trivial, so long as there was a prospect of *grabbing and dividing one million seven hundred and twenty-six thousand dollars.*

To contend manfully against foes where there is even a small chance of success is to show pluck; but to undertake to fight when the odds are entirely adverse is not pluck, but foolhardiness. And with such motives actuating such elements as were arrayed against them, Phelps, Dodge & Co. may well be pardoned if they hesitated about fighting.

It would have seemed the proper and manly part of men worthy to fill the high offices of Secretary of the Treasury, Senator and Representative in Congress and District Attorney, when the triviality of the offence of Phelps, Dodge & Co.—irrespective of the question of motive—was established, to fall back on that old legal but righteous maxim, "*Ne lex curat minimis*," or that clause in the Constitution of the United States which provides that "*excessive fines shall not be imposed, or cruel and unusual punishments inflicted*," and to say, "This is too small a matter for a great Government to make much of. If duties in trifling amount have, under doubtful circumstances, been withheld, let them be returned, with sufficient of addition to serve as a warning against future irregularities. In these days of declining commerce let us deal tenderly with the reputation of American merchants." But under the present rule of politicians and

small men in high places, such was not, and for the immediate future, we have every reason to believe, such will not be the policy. On the contrary, the word has gone out that, in the debate contingent on the introduction into Congress of the bill affecting moieties and the Sanborn contracts, certain prominent members are to do their best to make good Jayne's assertion that "New York merchants are a set of infernal thieves," and that special efforts are to be made to disgrace the great firm that has been imprudently restive under the robbery to which they have been subjected. Such an arraignment, however, from paid attorneys, will be subjected by the people to a very heavy discount.

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[From the BALTIMORE PRESBYTERIAN, March 17, 1874.]

Wm. E. Dodge, of the firm of Phelps, Dodge & Co., appeared before the Committee of Ways and Means a few days since and gave a history of the case in which they had paid a large sum as a compromise, showing the manner in which the firm had been treated. His statements made a deep impression, and there was scarcely any dissent from the opinion that the treatment of the firm had been wholly unjustifiable. The Committee was, it is said, thoroughly satisfied that the representations made to the Treasury by Jayne and his confederates, and upon which the department acted, were false. The friends of Mr. Dodge, and they are legion, whose faith in his integrity was unshaken, even when the testimony against him was strongest, will rejoice at his vindication. His firm suffered to the amount of nearly \$300,000, of which \$65,000 went to one person, the chief informer against them. We cannot but believe that further investigation will make plain the duty of Congress to vote the firm of Phelps, Dodge & Co., a sum equal to that they have lost.



## ANNUAL DINNER OF THE NEW YORK CHAMBER OF COMMERCE.

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[From the N. Y. TRIBUNE, May 8, 1874.]

The one hundred and sixth annual banquet of the New York Chamber of Commerce was enjoyed at Delmonico's, at Fourteenth street and Fifth avenue, last evening. The celebration was befitting the dignity and venerable eminence of this high body. An experience very extended, resources the most ample, and a character which brings a ready acceptance of invitations to distinguished guests, make the anniversary festivities of the Chamber of Commerce notable in every way. In the number present last evening there was a little falling off from that of some previous years, and several empty seats were noticed at the sumptuous tables. But in the position and good name of the guests and members present there was a brave array. At the centre of the raised table on the upper side of the hall was the Hon. William E. Dodge, the President. Upon his right there were the Hon. Henry Wilson, the Hon. Wm. M. Evarts, Judge Noah Davis, the Rev. Dr. William Adams, Samuel B. Ruggles, A. A. Low, David M. Stone, Judge John R. Brady, Jno. B. Bouton, Whitelaw Reid, the Rev. Dr. A. P. Putnam.

On the left were the Hon. William F. Havemeyer, the Rev. Dr. John Hall, Professor Roswell D. Hitchcock, Peter Cooper, the Rev. Dr. Theo. L. Culyer, the Hon. Fernando Wood, the Hon. James W. Husted, the Hon. Erastus Brooks, the Hon. Henry E. Davies, the Hon. John C. Robinson, the Hon. John A. King, and the Hon. S. S. Cox.

The responses to the toasts given were of marked interest, and fixed strict attention, though some of them were of extreme length. The gravity of the staid assembly was changed to enthusiasm by several references to matters of especial interest. Mention of the system of arbitration in commercial disputes, and of the appointment of Ex-Judge Faneher as arbitrator was cordially applauded. References by Mr. Dodge and Mr. Evarts to the evils of the moiety and seizure system in revenue cases, and to the prospect of relief with Judge Davis's emphatic condemnation of the system were heartily approved.

The following is an extract from the speech of Judge Davis, in response to the toast, "*The State of New York*."

You have alluded, Mr. President, to the case of your own house. There is an old saying among lawyers that hard cases make bad laws. That is true of the decisions of courts. But in practical life, hard cases make good laws, for they arouse the attention of the community to evil laws, and compel their abrogation. The blood of the martyr is the seed of the Church ! Not unfortunate will it prove if the seed from which springs regenerated laws shall be found to have been poured out in the blood taken from your veins. Denounced as I have been for having certified, solely through a sense of justice, that while doing acts which were clearly violations of the law, and thus subjecting you to heavy penalties, you and your house were free, in my opinion, from all intention of defrauding the Government. I still hold to that opinion as the exact demand of truth and justice toward yourself. I have never, on any occasion or under any circumstances, expressed any contrary opinion. There was no occasion for doing so; for where an act forbidden by the statute is knowingly done, though in ignorance of the law, and even in supposed compliance with it, if a loss of duties is the result, the question of actual intent to defraud is not important, in a legal sense, until the case, after judgment, reaches the Secretary of the Treasury on application for remission—which he is only permitted to grant where "intentional fraud" or "wilful negligence" have not occurred. Not to have written you as I did, with the views I had of the law and the facts, would have been unmanly and dishonorable. Pardon this personal digression. The bill reported by the Ways and Means is a long advance toward good legislation, and should meet the encouragement of this Chamber. Whatever aids commerce touches closely the heart of our State and City. Our City is the creature and very child of commerce. Here is the gateway through which the wealth and strength of the Old World are marching into the New. Give to its vast and cosmopolitan mercantile interests perfect freedom from the gyves and fetters of unjust laws, and it will surely attain unbounded prosperity.

Mr. Dodge then said : The allusion in the speech of Judge Davis to the case of my house may cause you to pardon a simple remark which otherwise might be out of place. You may have noticed in a letter printed in *The Evening Post* of last evening an insinuation that Judge Davis wrote a certain letter with a view to compensation. It is barely doing him justice to say here that not one cent was offered or paid to Judge Davis, and he would scorn to receive it.



# COMMENTS OF THE PRESS.

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## A SLANDER CONSIDERED.

[From HARPER'S WEEKLY, May 9, 1874.]

The character of the judges upon the bench is a matter of such vital importance to the public welfare that it is an urgent duty of the press to scan it closely, and when it is unjustly assailed, to defend and protect it. It is a kind of treachery to the highest public interest to suffer in silence assaults upon the honor of magistrates; and the public is apt to believe charges which are not plainly refuted. We spoke last week of the manner in which Judge Davis has been attacked. There is doubtless in many minds a regretful feeling that he did in the case of Phelps, Dodge & Co. something which was not quite candid and upright; and we propose now to state the simple facts which a careful study of all the testimony in that case reveals, that those who are not resolved to denounce him may see how honorable and blameless his conduct was.

Judge Davis was District Attorney, the legal adviser and counsel of the government in revenue cases. The revenue law of 1799 makes actual intent to defraud by the entries in an invoice the test of forfeitures; and the jury must find that the acts were done with intent to evade the payment of duties. The law of 1863 changed this, and required not that the importer should mean to defraud, but only that the irregular entries should have been knowingly made. The method of invoicing adopted by Phelps, Dodge & Co., in perfect good faith had resulted in their overpayments of duties being largely in excess of the underpayments. This showed plainly enough that there was no intent to defraud. But of all this Judge Davis knew nothing. His attention was first called to the subject by the customs authorities, under the wretched law which made irregularity in one point, but without the least fraudulent purpose, condemn the whole invoice.

He had but three interviews with the customs authorities upon the subject. At the first he saw the affidavit alleging the erroneous valuations, but there was nothing to show that the government had been the gainer by the whole transaction. He did, therefore,

what under the law was his plain duty; he advised that it was a case for investigation. From that time he had nothing more to do with the case, Jayne continuing the investigation, until his advice was again sought by the government. He then had an interview with Jayne and the counsel for Phelps, Dodge & Co., who had advised a settlement, to which the firm had assented. Judge Davis had neither by word nor deed procured or urged a settlement, and the proof of it is the constant friendly regard of the firm for him. At the interview he was consulted as to the best method of settlement, and he advised that which was most usual in this class of cases, a fact which relieves him from the imputation of hurrying a settlement for his own advantage. The third interview was that at the Custom House, where again, as the legal adviser of the government, he stated the fact, which he could not deny or conceal, that the courts had generally held that the whole invoice, and not the tainted items only, were forfeited. This was undeniable, and Senator Conkling gave the same opinion more forcibly. At this interview, irritated by circumstances that had been brought to his knowledge, he declined to take any fee, and stated his belief that no jury would ever give a verdict for the government—that is to say, that there could be no evidences of fraud or actual loss to the government offered. Judge Davis did nothing but his plain duty during all this time.

And now was there anything in his subsequent action inconsistent with this? He believed that, under the law, the invoices were liable to forfeiture, and that the proposed settlement was legal and proper. Intent to defraud had nothing whatever to do with the forfeiture. The Secretary of the Treasury might, indeed, have remitted the forfeiture, but that would have exposed the firm to a suit and judgment for a vast amount under the law, with serious injury to their credit. They preferred the settlement, with which Judge Davis had nothing whatever to do. When he had left office, and when one of the most honorable houses in the country was held up to public odium as swindlers who had sought

to defraud the government, and when the fact transpired that the overpayments were largely in excess of the underpayments—which was conclusive against fraudulent intent, and which Judge Davis did not know until he had left office—with the natural instinct of an honest man he wrote to Mr. Dodge that he was satisfied there was no intent to defraud, but not saying that under the law the settlement was wrong or illegal, which would have been a confession that his own conduct had been oppressive. There has, therefore, been no change of position or opinion whatever on the part of Judge Davis. His conduct has been entirely consistent and honorable. The law undoubtedly allowed him fees in such cases, but the fees did not depend upon fraudulent intent, and the fact of fees did not release him from his duty to advise the government.

As for letters to Jayne, they alluded to certain just and lawful dues of his office, which had not yet been paid, and which he wished Jayne not to forget. Judge Davis was then upon the Supreme Bench for fourteen years, and his letters could not mean that he wished business from Jayne. So in regard to the expression that all trouble would have been avoided had the settlement been made as agreed, it refers to the long and angry controversy in the case of Phelps, Dodge & Co. The evidence in the whole affair shows clearly to an impartial mind that Judge Davis's

conduct throughout was that of an honorable lawyer. Nor is there the least support afforded by it for the bitter calumnies to which he has been subjected. That constant and malignant hostility, however, is only one of the penalties which a resolute and incorruptible magistrate must expect to pay who has made himself obnoxious to organized and powerful rascality. It was a striking refutation of the slanders which have been uttered against him that at the late dinner of the Chamber of Commerce Judge Davis should have been called upon by Mr. William E. Dodge in these words, which were received with immense applause:

"We had anticipated the pleasure of having our highly honored Chief Magistrate, Gov. Dix, respond to the next toast, but a telegram has been received expressing his regret that the pressure of public duties will not permit him to be present. I shall ask a gentleman to take his place who has honorably filled many high positions in our State, and has recently commended himself to the esteem of our best citizens by his honest and impartial trials and condemnations of the men who had so long plundered our city government, though he has also secured the enmity of those who sympathized with their crimes. He has also taken a noble stand in the effort to secure to our merchants a revision of our revenue laws. "I will call on the Hon. Noah Davis."

# REPORT OF THE COMMITTEE OF WAYS AND MEANS, AND ACTION THEREON IN THE HOUSE OF REPRESENTATIVES.

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The Committee of Ways and Means of the House of Representatives, after completing their investigations in respect to the proceedings of Custom House officials, under the several Acts of Congress authorizing the distribution of moiety, the employment and rewarding of informers and the arbitrary seizures of books and papers, gave judgment on the whole subject (and by implication also upon the case of Phelps, Dodge & Co., which, as already shown, was made a "pivotal case" before them), by reporting on the 19th of May, 1874, through Hon. Ellis H. Roberts, of New York, a bill, which contained the following, among other provisions:

*Repealing all provisions of law under which moiety of any fines, penalties or forfeitures, or any share therein or commission thereon, are paid to informers or officers of customs, or other officers of the United States; and providing that from and after the date of the passage of the act the proceeds of all fines, penalties and forfeitures shall be paid into the Treasury of the United States.*

*Repealing all provisions of law authorizing the arbitrary seizure of books and papers, and in lieu thereof providing, that in all suits other than criminal, arising under any of the revenue laws of the United States, the attorney representing the Government, whenever, in his belief, any business book, invoice or paper, belonging to or under the control of the defendant, will tend to prove any allegation made by the United States, may make a written motion, particularly describing such book, invoice or paper, and setting forth the allegation which he expects to prove; and thereupon the court shall issue a notice to the defendant to produce such book, invoice or paper in court, at a day and hour to be specified in said notice, and if the defendant shall fail to produce such book, invoice or paper in obedience to such notice, the allegations stated in the said motion shall be taken as confessed, unless his failure to produce the same shall be explained to the satisfaction of the court. And the said attorney shall be permitted to make examination of said book, invoice or paper, if produced, and may*

offer the same in evidence on behalf of the United States. But the owner of said books and papers, his agent or attorney, shall have free access to them at all reasonable times pending their custody by the court.

Providing that the Secretary of the Treasury, in lieu of moieties of fines, penalties and forfeitures heretofore given for information concerning frauds upon the revenue, other than direct smuggling, shall make suitable compensation to persons giving original information to the Government; but that such compensation shall not, in any one case, exceed the sum of five thousand dollars.

Other provisions, limited the fine to be inflicted on any importer for fraudulent undervaluations to the sum of five thousand dollars, and forfeiture of such items of merchandise to which the fraud relates; allowed a jury to pass separately upon the question of fraudulent intent; and forbid the maintenance of any suit or action on the part of the United States for the recovery of any fine, penalty or forfeiture, unless such suit or action shall be commenced within two years after the time when such fine, penalty or forfeiture shall have accrued. Another section also provided, that when any goods shall have been once entered at the Custom House, all accruing duties settled and paid, and the goods delivered to the importer, such settlement and delivery, in the absence of fraud, and in default of protest from the importer or his agent, shall be final and conclusive upon all parties.

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## DEBATE IN THE HOUSE.

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### SPEECH OF HON. ELLIS H. ROBERTS.

In reporting this bill for the action of the House, Mr. Roberts spoke in part, as follows:

Mr. Speaker, the measure which is now submitted for action commands attention by its importance. It deals with much of the machinery for the enforcement of our customs revenue laws. It reduces penalties and forfeitures in cases designated. It submits the question of fraud to the court or jury as a separate issue. It reduces the period of limitation within which suits may be commenced. It abolishes the whole system of moieties, while substituting moderate rewards for the detection of crimes against the revenue. It sweeps away the arbitrary processes for the seizure of books and papers. The aim is to do brave work toward the adjustment of

customs legislation to the standard of freedom and intelligence attained in our other statutes.

This bill is the outgrowth of a careful investigation before the Committee of Ways and Means, which began on the 17th of February and closed on the 28th of April, and which is recorded in a volume of nearly three hundred pages (Miscellaneous Document, No. 264). Representatives of the merchants of the leading cities have been patiently heard, and the Committee have sought information from the most competent experts in the service of the Government. They confidently present the bill as worthy to be enacted into law in the interest of the revenues, of public morality, and of commerce.

#### APPEALS FOR ACTION.

Rarely have stronger appeals come to Congress than those for the reforms here proposed. The sense of wrong had grown to be profound and general among merchants. It found expression in passionate indignation, in glowing appeals, and in the more eloquent language of personal incident and unquestioned fact. Your customs laws rankled like fetters. You collected your revenues without armies, but hate was setting in the hearts of those who saw their neighbors crushed about them. You wrung your forfeitures from the careless as well as the criminal, and the enormity of the penalty made the offence appear trivial. Ruin trod in the footsteps of officers. The emoluments of prosecutors and their attorneys exceeded the salary of your President and of all the Justices of the Supreme Court. The informer had but to "strike," and strong men grew pale, great houses tottered, while spoils were gathered in by a charmed circle.

#### OFFENCES HAVE BEEN COMMITTED.

Offences have been committed against the revenue. But crime may be cultivated instead of being prevented. Cruel and extreme penalties cultivate it. If it be fraud to misconstrue a statute, crime is inevitable. At the best, attempts will be made to defraud the revenue. They will increase, and the chance of punishment will be diminished, whenever public sentiment pronounces the laws unduly severe, and their application harsh and oppressive.

#### DUTY TO REMOVE JUST GROUND OF COMPLAINT.

The first duty of the Government is to remove every just ground of complaint against the laws and their administration. When that is done, enforce them without fear or favor. Our institutions depend on the good will of the citizen. For the collection of the revenue, one of the primary



essentials is the moral support of those who pay. This has been to an alarming degree lost. Sympathy has been aroused for those charged with offences against the customs. Penalties enforced in accordance with the letter of the law have excited odium. The machinery of a past age, the rigors of the war period, the monstrous forfeitures of our system have borne their natural fruit. Violation of the laws has ceased to affix opprobrium. Their enforcement carries a taint as in the case of the old fugitive slave law.

#### DEMORALIZATION OF IMPORTERS.

We have heard general denunciations of demoralization among importers. Commerce is not a prohibited occupation. Men honorable in every other relation, an entire class, including those who bear the ark of religion and the sacred fires of art, and who sustain the very fabric of society, cannot be all knaves in their transactions with the Government. If they be offenders, provide penalties against them which can be enforced by the courts. Let them be certain, and not dependent upon the temper of customs officers, nor the discretion of the Secretary of the Treasury. Your fines and forfeitures are now so enormous that suits begin with compromise and often end in remission.

#### ODIUM WITHOUT PROFIT.

The Government bears the odium of cruel extortions without their profit. Our statutes array merchants in hostility without advantage. The honest importer is annoyed and terrified by the shadow of ruinous penalties never collected. It will cost nothing to change this situation. Very much can be gained. Those who pay our duties are citizens. They are interested in our institutions. Besides their money interest in an equal enforcement of the laws, they are an essential part of the constituency from which the Government proceeds and on which it depends. Their aid is better than police. Their support is better than armed men. Against their sense of wrong, against their aroused moral sentiment, laws and officers can do little. Just laws, reasonable penalties, humane enforcement, enlist the conscience, the interest, the active support of those who are affected. If we retain the processes, the spirit, the harsh severity of barbaric ages in laws and administration, we must expect the restiveness, the attempts at fraud, the moral resistance which extreme measures always invite.

Mr. SPEAKER, the purpose of this bill is to protect the liberties of the citizen, to mitigate enormities in the statutes which have interfered with their due enforcement, and to provide sure and certain methods of collecting the customs revenues. The changes are in some respects radical, but they are demanded by the interests of the Government and of morality. Instead of

demoralizing emoluments to officers, instead of arbitrary processes and absolute confiscation, the bill appeals to the good will of the citizen and to that certainty of enforcement of judicious penalties which are the only trust of a free government. Sir, let Congress abolish moiety; let it protect the secrets of business and friendship from arbitrary invasion; let it free commerce from cruel and unreasonable penalties; let it punish intentional fraud more than carelessness or honest misconstruction; let it thus enlist the conscience as well as the interest of the merchant in the collection of customs, and you mark an epoch in legislation.

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#### SPEECH OF HON. JAMES B. BECK.

Mr. Roberts was followed by Mr. Beck, another member of the Committee who spoke as follows :

MR. SPEAKER—No question has engaged the attention of the Committee on Ways and Means so earnestly since I have been a member of it, as that now submitted to the House for its action. Upon a careful examination of the subject we found a system of laws in force which are in many regards a disgrace to any civilized country, among the most odious of which are those which allow the seizure of the books and papers of merchants by the officers of the Government to be used as evidence against them in suits for penalties and forfeitures. We found that the Government divided the spoils, often obtained by the most corrupt and dishonest means, with the most disreputable men, making the whole people their partners in the most scandalous combinations against individual citizens. We found excessive fines and forfeitures inflicted and imposed, regardless often of whether guilty intent existed or not, and men deprived of the right of trial by jury upon that most vital question. In short, we found such a state of things as rendered some such bill as we have presented necessary in the opinion of the Committee.

We may have gone too far, or we may not have gone far enough in our efforts to reform and remedy these evils; it is for the House to decide. My duty, especially as a member of the sub-committee which drafted it, is to inform the House why I agreed to the leading features of the bill as presented.

The first section repeals absolutely, and I hope forever, all laws and parts of laws which authorize the Government or any officer of it, on any pretense whatever, to seize the private books and papers of citizens and force them to furnish evidence against themselves in proceedings for penalties and forfeitures. The law giving the Government that right was first enacted in

1863, in the midst of the civil war, when laws were silent, when constitutional rights and congressional limitations were too often disregarded, when the plea of necessity justified all usurpations, and the complaint of the citizen was generally disregarded both in and out of Congress by those in authority. Such a law could never be enacted in time of peace by the representatives of a free people.

Sir, it is impossible to read the testimony taken by the Committee on this subject without feeling not only that a deep and burning wrong is done to the citizen by dragging his most sacred and confidential papers into court to convict him of crimes and misdemeanors which degrade, disgrace and bankrupt him, but that the Government is degraded and disgraced in the eyes of the civilized world by the foul means it resorts to for the purpose of extorting evidence against and money from its citizens.

#### HOW THE CASE OF PHELPS, DODGE & CO. APPEARED TO THE COMMITTEE.

Take the case of Phelps, Dodge & Co. as an illustration. I select that because, in the language of Detective Jayne, of its "having been made a sort of pivotal case," *one* (as Mr. Jayne assured Mr. Dodge in the presence of Judge Davis, and repeated substantially before the committee) of the worst he ever saw, in which he charged that for a series of years deliberate attempts to defraud the revenue had been made by systematic perjury and false invoices and undervaluations.

That firm had carried on business in New York for many years; they had imported goods to the value of between three and four hundred million dollars; they had paid in duties to the Government over \$50,000,000; their good name and integrity had never been assailed. But they had a thief in their employ, a trusted, confidential clerk, who had access to all their books and papers. Tempted, perhaps by Custom House officials, who would share the spoil and avoid the disgrace, he violated the trust reposed in him, betrayed his benefactors, mutilated the books he was bound by every principle of honor and of honesty to protect and preserve, stole the private papers of his employers, and carried the evidence of his own shame and dishonor to the Custom House detectives and officials, who entered at once into partnership with him in the nefarious scheme of robbing respectable merchants for private gain, and brought the whole power of the Government to support them, under pretence that they were protecting our revenues. Affidavits were made at once, warrants were ordered, the members of the firm were arraigned, denounced, and threatened with ruin, degradation, infamy and imprisonment if they did not consent to place all their books and papers in the possession and at the disposal of the harpies who were determined to prey upon them. Conscious of innocence, while fearful of exposure which

would not fail to injure their credit, especially abroad, where people assume that Government will not bring such charges against a citizen unless they are certainly true, they agreed at once that all books and papers desired might be taken, and they were carried to Jayne's office by the cart load.

Once in possession of all the evidences of guilt or innocence, the next step was to proclaim to the world through the press the guilt of the firm, and to so magnify the case as to make the settlement on any terms the only alternative to escape from absolute ruin. Claims, the nature of which were never explained, were asserted, amounting to \$1,750,000, and a compromise was finally effected at \$271,000. I propose to let Mr. Dodge tell how and why it was settled.

*Mr. Beck here quoted at length from the speech of Mr. Dodge before the Committee, and continued as follows :*

It requires no arguments to prove how utterly helpless these merchants were in the hands of such a power, stimulated by such incentives to fasten guilt upon them. Not one of these men could get a dollar if they did not get it out of their victims; all could reap a rich harvest if they could by any means force them to yield to their demands. The costs in court, though nothing was done, amounted to \$8,145 09. The share of the district attorney in the \$271,000 was over \$5,400; that of the collector, naval officer and surveyor was \$21,906 01 each, or \$65,718 03 in all. Jayne got \$65,718 03, which he was to divide with the thief who stole the papers. General Butler was paid a large fee out of his and the thief's portion by Jayne. How much Senator Conkling got as adviser of the Custom House officers does not appear. They failed to avail themselves of our invitation or notification that we would gladly hear them if they had anything to say, so that we were unable to prove what their private arrangements with counsel were.

With such an array of officials against the merchants, what was an appeal to the Secretary worth? Every officer on whom he could rely for information was directly and largely interested in having the highest penalty imposed. The leading administration Senator, and one of the ablest republican members of this House, were their advocates and attorneys. What private man stood any chance with the Secretary under such circumstances? What Secretary, under such an administration as this, would dare to oppose such a combination? Sir, it was apparent from the first that they had to pay whatever sum they were told would satisfy the rapacity of their persecutors, *and they paid it*. Any of us would have done as they did. Mr. Schultz stated the case vigorously and truly when he said:

Every official with whom he comes in contact, except the Judge and the Secretary of the Treasury, have a direct pecuniary interest against the merchant. Let the law be so amended that these two functionaries can receive a portion of the moiety, and then so far as human motive can be controlled by sordid influences 'a perfect system of confiscation exists.

With their books and papers in the hands of their enemies, their credit gone, their business paralyzed, their good name blasted by the action of the Government; charges of fraud and robbery, the nature of which they did not understand, which were, of course, magnified and circulated to all parts of the world where they had business connections by their competitors in trade, as the officials knew and intended they should be—these things were, as Mr. Dodge truly said, "the terror held over us, the pistol at our ears. That," he added, "was the reason we were anxious to have it settled even by the paying of \$270,000." With seven eminent lawyers engaged, and constantly contriving how to catch them; entrapped for alleged fraud not known to them, and never explained, of \$1,600 in five years, though in that time their *over valuations*, of which the Government got the benefit (all of which were artfully concealed by those who held the books), amounted to hundreds of thousands of dollars, altogether constituted one of the most shameless cases of extortion I ever heard of. And this was the pivotal case.

Other cases brought before us were nearly as bad. Perhaps that of Mr. Caldwell, of Philadelphia, taken in all its relations, was worse. The extortion of \$50,000 from Woodruff & Robinson was not much better. After patient hearing and careful study I became thoroughly satisfied that the safety of the citizens and the good of the Government alike required that all laws authorizing the seizures of books and papers on any pretext whatever, should be at once repealed, and that all moiety to Custom House officials and informers should be abolished, except in cases of smuggling, of which I will speak presently. I would go a step farther, and prohibit by positive law, under the severest penalties, all Government officials and all members of Congress, whether Senators or Representatives, from being employed, either directly or indirectly, as counsel for spies, informers, Custom House or other officials, in any matter relating to the revenues of the Government. They are now prohibited by law from prosecuting claims against the Government, either in the Court of Claims, before the Departments, or the Committees of Congress. They should not be allowed to use the power and influence which official position gives them to make money out of the citizen under the pretences that they are serving the Government, in any court or before any tribunal.

Representative men, whether of States or people, ought, so long as that



relation exists, to be prohibited from taking part in or making money out of controversies between the Government and its citizens on either side. I shall try to so amend this bill as to attain that end. Now, members of Congress are sought for and employed by spies and officials, not as other men are, because of their ability as lawyers, but because of the influence, political or otherwise, they are supposed or known to exert over the Secretary of the Treasury and his subordinates. I repeat, *and his subordinates*; because the proof in the Sanborn contracts shows conclusively that nearly, if not quite all, of the decisions of the Secretary are in fact the decisions of *mere subordinates*, his name and apparent authority being only official routine. Let it be remembered that these subordinates are not put or kept in their positions by the Secretary; they may be, and often are there against his will, placed and kept there by the influence and authority of the Senators and Representatives whose fees depend upon their decisions.

The spies and other interested officials soon learn what member of Congress can best control official action in the Treasury Department, and that member becomes their hired attorney. If the officer who has the case submitted to him was ever so honest, it is unreasonable to expect that he will dare to disobey, and he will not be inclined to disoblige the man who put him where he is, and who can have him removed and a more pliant tool put in his place if he fails to decide as he is ordered or expected. As conducted now, such proceedings are a mockery and a farce. Does any man here believe, for example, that any subordinate, or even the present Secretary, would dare to disobey the known wishes of Senator Conkling and General Butler—both of whom, as Mr. Dodge, Judge Davis and Mr. Jayue show, were acting as counsel for the officials or informers in the Dodge case? Both, of course, were selected because of their well known political power and influence in high places, and both were prominently exhibited to the merchants as a standing menace to enforce settlements on the terms demanded.

Mr. KASSON.—I hope the gentleman will say that there was not a particle of evidence indicating that Senator Conkling received anything.

Mr. BECK.—There was evidence that he was the counsel and adviser of these men. The gentleman will find it in the evidence of Judge Davis, Mr. Dodge, and others; and the men who employed him, and whose counsel he was, refused to come before the committee on a polite invitation, and therefore we could not develop what the facts were.

Mr. KASSON.—In the interest of justice I suppose the gentleman will allow it to be stated in this connection that the evidence was simply that the Senator was in the room on one occasion reading the United States statute as a citizen simply. I wish the gentleman to do justice in the matter.

Mr. BECK.—Well, Mr. Dodge, in his sworn testimony, says that Senator Conkling was in New York in consultation with these officers at a time when for two days the question was whether the amount paid should be \$500,000 or \$271,000. There is evidence that he was there acting practically as counsel, and his clients should have come before the Committee and told them what they paid him, if they paid him anything, or if they did not pay him anything.

Mr. HALE, of New York.—Will the gentleman permit me a moment in this connection? I think he is doing injustice to a gentleman, which I am sure he would not intend to do.

Mr. BECK.—I have not time to yield for interruptions. I have done Senator Conkling no injustice. I have made no charge against Senator Conkling. I say that the testimony shows that he was there as counsel for these men.

Mr. HALE, of New York.—The gentleman is certainly in error in that regard.

Mr. BECK.—He was counsel and advised with them, and Mr. Dodge swore that he believed that he helped to bring down the amount from \$500,000 to \$271,000. What I call attention to is this point: What chance had the merchants in that state of the case? what chance was there that justice would be done to them, when the surveyor, the collector, the naval officer, the district attorney, the special agent, the informer—all the officials to whom he could look—were interested, and had been paid bribes, if you please, to decide against the merchants, and a leading Senator of the Administration party was their adviser, and one of the ablest republican members of the House was counsel for the informer? Under circumstances like these was it not evident that this firm of merchants had to pay whatever was demanded? Would not you have done it? Would not any of us have done it?

I would, I repeat, by laws which could not be evaded, make such things impossible. Till it is done appeals to the Secretary are a delusion and a snare. I hope the House will hereafter prohibit Representatives from interfering in any way between the Government and the citizen. Congress should be the highest court in the land, and its members should all be free to listen without partiality or prejudice, certainly without personal or pecuniary interest, to all the appeals of the people.

Mr. ELLIS H. ROBERTS.—I would ask the gentleman from Kentucky if he has any reason to mention the name of the Senator here? He knows very well that Mr. Dodge expressly testified that the Senator he names he supposed was there not as counsel.

Mr. BECK.—Who said so ?

Mr. ELLIS H. ROBERTS.—Mr. Dodge.

Mr. BECK.—Mr. Dodge did not say so.

Mr. KASSON.—If the gentleman will allow the language referred to to be read, it will satisfy him ; if not, I will read it myself when I get the floor.

Mr. BECK.—Senator Conkling was there reading the law and expounding its bearings as the friend and adviser of the Custom House officials—a thing which he should not be allowed to do, that no Senator or Representative ought to be allowed to do, and if my amendment prevails, they will never do it in the future.

Mr. ELLIS H. ROBERTS.—I would ask the gentleman from Kentucky whether, as a lawyer, he thinks that it is a just thing to say that a man is guilty of receiving pay because no evidence was submitted that he did not receive pay ?

Mr. BECK.—This Senator had a right to be there under the law.

Mr. ELLIS H. ROBERTS.—Very well.

Mr. BECK.—I am not complaining about that; but I deny that such a law should exist. I deny that a man who is a leading Administration Senator should have a right to go and advise the Custom House officers against a citizen and to give the weight of his influence, his name, and his authority against the citizen.

Mr. ELLIS H. ROBERTS.—The gentleman from Kentucky says that the Senator to whom he refers had a right to be there.

Mr. BECK.—He did.

Mr. ELLIS H. ROBERTS.—Did not Mr. Dodge also expressly disclaim any belief that he was there other than as a citizen ?

Mr. BECK.—I will read for the third time the testimony of Mr. Dodge upon that point :

Mr. FOSTER.—I think you stated when you were here the other day, Mr. Dodge, that there were lawyers, members of Congress, who were acting as counsel for these parties.

Was not that a plain question ?

Mr. DODGE.—I did say so.

Mr. FOSTER.—Well, I find that this Committee and myself have been subjected to criticism because we brought out the name of only one such member, while there were others

Mr. DODGE.—I only intended to speak of two. I have no hesitation in stating who they were after all that has been said before this Committee. I have purposely avoided naming them heretofore, but if the Committee wish I have no objection.

The CHAIRMAN.—You may answer the question.

Mr. DODGE.—I suppose there is no doubt in the Committee's mind on the subject now, as

it was admitted last night by the special agent that he did employ, in one case especially, General Butler as counsel. I will add that Senator Conkling was in New York and in consultation with these gentlemen at the time when for two days the question hung whether this thing should be settled or not, and hung simply on the fact that Mr. Laflin said the crime was so enormous that, so far as he was concerned, he never would consent to settle it short of the payment of \$500,000 by Phelps, Dodge & Co. I think Senator Conkling advised him to do better. I only wish he had stuck to it one day longer.

Mr. BECK.—The naval officer, Mr. Laflin, is well known to have been appointed by the Senator; and the Custom ring, if you force me to go into politics, is supported by this Administration, of which that Senator is a leading friend, for the purpose of raising money this way, and by the use of the money thus acquired, thus stolen from the merchants, to carry out the party machinery. I might go a good deal further in that direction, but I will not, for my time is running fast. I might go on and show that when these parties see where they can make money out of the citizen, they do not wait to prove what he was. Mr. Dodge was loyal enough. I am told he gave \$25,000 to help elect your present President. But these men were after the life blood of this firm, and they came very near getting it.

But, Mr. Speaker, I must hasten to notice other important changes in the law proposed by the bill now before us. Moieties and seizures are twin abominations. They ought to die together and be consigned to the same ignominious grave. Without the moiety system seizures would never have been resorted to. The enormous rewards offered and the temptations placed before bad or even weak men are too great to be resisted. Under them private virtue and honor as well as official integrity give way, and a system of corrupt espionage and robbery has grown up which, if not crushed out by vigorous laws, will destroy what little of honesty is left in the public service, together with all that makes the business relations of men either respectable or safe.

Worse, if possible, even than that, the money extorted by robbery and fraud is so distributed among the officials that those who act as judges and arrange the terms of settlement, the men on whose statement of fact the Secretary of the Treasury has to rely for the truth, are all paid to decide against the citizen. Take the Dodge case again as an illustration. The Surveyor, Naval Officer and Collector were each *bribed* to the extent of \$21,900 to decide against the merchant whose books and papers they held and used, though obtained from a known and acknowledged thief. Jayne and his accomplices got over \$65,000, while the United States Attorney, clerks and marshals pocketed \$8,145 as their share of the spoils—every dollar of these immense sums being dependent on their success in coercing a

compromise or securing a conviction. Wherein does all this differ from the bribery of a judge or jury?

The very fountains of justice are corrupted, and all that emanates from such polluted sources is of course impure. *More degrading than all*, more humiliating to us as Representatives, and to the proud and honest people we represent, is the fact that the Government is by legislation made the partner of thieves. Think of the American people, under the folds of the Star Spangled Banner, boasting of their advanced civilization and pretending to look with scorn and contempt on all other nations because of our superiority in protecting the rights of our citizens with Magna Charta, the Bill of Rights, *habeas corpus*, and all the bulwarks of liberty crystalized in our own great charter, sneaking into a den in the Custom House and paying over to their detective, Jayne, \$65,718 out of \$271,000, which they had extorted from citizens against whom they could only make up a claim for \$1,600, even after they had searched their books and papers for five years, concealing overpayments twenty-fold in excess of the claim, and whispering in his ear to pay \$40,000 as his share of the profits of the speculation to the thief who had stolen the papers of his employers, who by all laws human and divine should have been spurned as an outcast and doomed to a felon's cell, only requiring him to be sure and keep the facts concealed.

The system is a disgrace to our civilization, a reproach and a scandal in the eyes of all nations; one which has been condemned by our Secretaries and committees, and is only maintained by the influence which political organizations and party leaders exert to uphold it, because the Custom House officials out of their extortions can be made to furnish the money in New York, Boston and elsewhere, to control primary elections, pack conventions, stuff ballot boxes, and do the other dirty work for their political patrons.

#### JAYNE'S CHARACTER.

I propose to say a few words as to the men who are employed to do this dirty work, and the means they employ to accomplish it. Mr. Jayne is a type of the men who become informers under the moiety system. I select him because he is one of the best of his class—intelligent, vigilant, well informed, and, so far as I know, conforming strictly to the laws which conferred authority upon him. His underlings and retainers are in all the prominent mercantile houses of New York, ready to ruin the men whose devoted friends they profess to be—perhaps making false entries for years, so they can, when the penalty becomes an object, charge their own frauds upon their victims; noting and concealing every irregularity, so as to prevent its correction, until the proper time arrives to lodge their information. His operations will illustrate the system. He spoke at great length before



the Committee of Ways and Means, and he was examined some years ago before a committee of the Senate. Perhaps it would be best to first notice specimens of his testimony before the Senate Committee as to the means resorted to in order to procure evidence or confessions from his victims. (*Mr. Beck here quoted from the minutes of Jayne's investigation, already given in the speech of Mr. Brainard before the Ways and Means Committee, and continued :*)

This picture needs no filling up; it stands out on the canvas. The detective toying with the handcuffs, putting them on his own wrists to let the doomed man see how they worked; telling his victim what a wicked fellow he had been; holding up to him the terrors of the law; changing his tactics according to the subject he had to deal with; urging frank confession as the safest and best course, furnishes such a portrait of the prostitution of every principle of justice and law that it disgusts a man to think of the scene.

Mr. Dodge thus describes the ordeal he had to pass through when his books and papers were taken from him.

(*Mr. Beck then quoted from the description of his first interview given by Mr. Dodge, in his speech before the Committee, and the surrender to Jayne for unrestricted examination of the books of the firm, and continued :*)

Of course (on getting the books) he got all he wanted, and so used them as to secure for himself and his partners \$135,000, the Government getting the other half for protecting them from responsibility for the extortion. It seems to me that no argument is needed to prove that such a system should no longer be tolerated; the repetition of such wrongs ought to be rendered impossible. The effect of it is terribly demoralizing on our own officials. Lured from the performance of duty by hope of rich rewards, they see, it may be, day by day irregularities or technical violations of law which they know are unknown to the merchant; their plain duty is to inform him at once and prevent a repetition of them; their interest is to watch and wait so as to allow them to accumulate for months, it may be for years, and when the aggregate will secure penalties and forfeitures sufficient to gratify their avarice, make the seizure and demand the reward. These things, as the proof before us showed, are of constant occurrence, and will continue till we remove the motive for their continuance.

Mr. Beck concluded as follows:

MR. SPEAKER, please hold your gavel one moment. I have sought to avoid politics in this discussion, and think I have done so wonderfully well, considering the temptation; we avoid them in the Committee of Ways and Means, as the bill we have reported shows. But in closing I will show that the testimony laid by us before the House, which ought to be in the hands of every citizen, proves, and proves conclusively, that the Custom Houses

as now managed are sinks of iniquity, political dens supported by fraud, corruption and extortion upon the commerce of the country.

Think of it, sir; \$271,000 taken from one firm when the debt was only \$1,600. The report of the Secretary (Executive Document No. 124) shows that during this administration there has been paid at the port of New York:

To informers.....	\$491,342 26
To the Collector.....	174,137 57
To the Naval Officer.....	162,286 62
To the Surveyor....	159,476 04

And at the port of Boston during the same period:

To informers.....	\$152,798 18
To the Collector.....	50,816 40
To the Naval Officer.....	50,817 74
To the Surveyor..	50,817 60

While the collectors were receiving as salaries \$6,000 a year, the naval officers \$5,000, and the surveyors \$4,500 each besides.

Sir, these things ought not to be. No country can prosper while they are possible; no administration can be successful when the country is satisfied that it sustains, endorses and approves them. It is a system which converts our Custom House officials into mere political tools and tricksters, whose usefulness is measured not by their faithfulness in the collection of the revenues but in the power they can bring to bear to control primary elections, pack conventions, stuff ballot boxes and subvert the fundamental principles of republican government in the interest of the political tricksters to whom they look for support, and on whose influence they can rely to sustain them against all efforts at exposure.

Here the hammer fell.

#### JAYNE'S PICTURE, AS DRAWN BY MR. DAWES.

Mr. Dawes, Chairman of the Committee of Ways and Means, followed Mr. Beck in the debate, and in the course of his remarks expressed his opinion of Jayne and his associates as follows:

Sir, who is the informer? He is to have half of the whole. The officials take the other half and divide it into three parts. His is the lion's share. Sir, the informer in every position of society, in every place, and in every calling, is an odious and despised being. Everybody shrinks from him, no matter what be his position or his calling. He that goes about making a business of informing against his neighbor, so shocks the common sense of justice, decency and honor in all mankind, that he is univers-

ally despised. But let him do it for pay; let it be understood that he goes up and down the earth paid to inform against his fellow men, and the intensity of the feeling of hatred with which he is regarded and the feeling that he ought to be hunted around the earth is increased tenfold. Add to that that he is to have half of what may be made out of his informing. He is bad enough when he volunteers without compensation from any motives of malice or otherwise to inform against his neighbor; he has no place whatever in decent society. But when he does it for pay, much more when he is to have half of the proceeds of his cursed employment, the door of decent society ought to be and will be shut against him.

The leper may be tolerated among men, for his leprosy is his misfortune. The man that carries about him a loathsome disease, that is not his fault but his misfortune, engages the charity of the world to build a hospital for him and to care for him with pity and compassion. But the vile, festering, putrescent informer, who goes about the earth assured of one half of what he can make by his informing, finds no place as yet where decent men will harbor, or countenance, or associate with him.

Shall the Government of the United States take the wages of his sin and his iniquity and divide it with him? It is he who is the last refuge of this system. One after another they let go, or give up and throw overboard, and say we will not defend them. We will not defend an official, appointed by the Government perhaps, for his good character and under the control of the Government in his actions, subject to removal if he abuses his trust; no, we are willing to say that he shall not have this; but the man who is under no control, the volunteer who cuts himself loose thereby from society, without either calling or position, forfeiting by the very willingness to take this every other position of trust and confidence—it seems it is thought best that we should save him, it seems best that we should save and guard him by new legislation, that he may have one half or one quarter, it may be, of all fees and penalties and forfeitures. We guard this man, roving around among the merchants of the cities of New York, Boston and Philadelphia, with money enough, the fruits and promises of his success, to enable him to furnish the means that will invade the confidential relations that exist between the merchant and his clerks, tainting the most sacred trusts, lying in wait for the unwary, as it was shown before the Committee of Ways and Means at the desk of the Custom House, and seeing the merchant unwittingly put in his foot, by omitting, it may be by accident or by ignorance, or by any of a thousand ways consistent with his honesty, to conform to the most complicated system of revenue laws that exist in the world—standing, I say, at the desk, and seeing the merchant from day to day openly and unconscious of anything wrong, making

mistakes in his invoices, with a law behind him which says that a mistake in one item forfeits the whole invoice, and then when they are piled up by the dozen upon the desk of the Custom House, going and informing against him and getting one quarter of the forfeitures! And if the merchant appeals under that law to the Collector of the Port, the law makes that Collector the appellate court. If he decides that this man has innocently, without intention, been simply guilty of a technical neglect, he lets him go, and he does not himself get anything. But if he decides that the merchant is guilty, he gets one quarter. The court that this law has provided for the merchant to appeal to, to decide whether or not he has conformed to the law, has one half of all the penalties if he decides that the man violated the law, and if he decides that he has not so done, he does not have anything. The district attorney, who is put there as the officer of the Government in a semi-judicial character to see that justice is done between the Government and the accused, gets two per cent. of all, and the informer gets what I have told you.

Through the portals of the ports of New York and of Boston enters seven eighths of the commerce of the country, and, consequently, seven eighths of all the wealth that comes to our shores in the vessels that plough the deep and whiten every ocean with their sails. Some of the men who manage this commerce are styled contemptuously "merchant princes." Some of them have become such by industry, frugality, and fidelity to business relations with everybody else certainly but the Government. Some of them are young and enterprising men, beginning without capital and growing by devotion to an honorable calling, most honorable in all nations and all ages of the world, up to a competency and an independence, and to command the respect of mankind wherever they are known. What in their characters, what in their lives, what in their dealings with their fellow men that should lead us to infer that in their dealings with the Government of the United States there is any such mysterious and malign spell upon them that we cannot fix our laws so plainly and the machinery for their execution so simple that they, as others, can walk into our courts and feel that whether the judgment be for or against them that judgment is a righteous and a just one, commanding their respect as well as their obedience? On the other hand, this very system itself has just precisely the opposite effect. It teaches merchants to devise means of evading the law and the administration of it. The result is to drive high minded and high toned merchants out of business, and their places are taken by that class who take their chance in the world even by a violation of the law for the profit which in the long run they think it will yield, or it drives the importing business of this country into the hands of foreigners, who from

the other side of the water send their goods here to irresponsible consignees, who have nothing to lose and therefore nothing to fear. Such is the result fast coming to be the common law in the mercantile community of this country under the system this bill hopes to remedy. The wise, prudent man is seeking some other calling or absolute retirement rather than submit himself to the chances of accident and mistake that are inseparable from a complicated system, administered by men whose interest it is to let them pass into the grasp of the law, into the mistakes and pitfalls the law itself has dug for them, in order that the fruits thereof may come into their own coffers. It is a source of revenue that debauches the whole customs service of the country.

Men abandon honest callings that bring them a moderate compensation, and seek an employment that brings them these large returns. A man who, in the short time we have been here, has gathered as his share of the moieties somewhere in the neighborhood of \$400,000, was tempted from a quiet village, not many hundred miles from New York, where he was pursuing an humble calling which yielded him a moderate compensation, to tender his patriotic services to the Government of the United States in the capacity of a Treasury agent, in which he could act as informer. He now goes back to his native village, builds houses and stores, and steeples rise up there on which is written "The wages of an informer."

Men leave the revenue service of the country, and when we ask them why they do it, they say they could not afford to stay there at that compensation. When we ask them what they do now, they say that they have gone into the business of collecting the revenues of the country at the halves. Everything now is being taken at the halves; fifty per cent is the common compensation when you deal with the Government. There are men who have gone into a systematized, organized association, who go around this country and inform honest bondholders that there is interest due them here at the Treasury Department, that it is pretty difficult to collect it, and they will collect it for them at fifty cents on the dollar. Hundreds of thousands of dollars of interest money has been taken every year out of the Treasury of the United States by these men, who have turned their backs on honest callings and devote themselves to this fifty per cent. business.

The official service of the United States is being sapped and mined, and no such thing as a healthy, honest public service for fair and reasonable compensation in the revenue service of the country can long be maintained unless reform something like this radical change in the administration of the Government shall be adopted.

It does not stop with Jayne, nor with Sanborn, nor with men of that



class. It spreads like a contagious disease, and every official who comes in contact with these men, or with this service, becomes uneasy in his calling, unwilling to toil as he has done, and therefore he turns his back upon an honest and honorable position the moment he can find an opportunity to fill his pockets under this system of revenue service, which has existed now for the last ten or fifteen years, growing every year in the enormities of the amounts gathered in by these men, like a ball of snow rolled up little by little, until it becomes the great and overshadowing complaint that is now presented by this report of your Committee.

#### VERDICT OF THE HOUSE OF REPRESENTATIVES.

At the conclusion of the debate, which was participated in by Messrs. Wood, of New York; Burehard, of Illinois; Niblack, of Indiana, and Kasson of Iowa (all members of the Ways and Means, and all speaking in support of the action and report of the Committee), the bill was amended by striking out that portion which gave the district attorney power to compel the production of books and papers, and in one or two unimportant particulars. *And then the House of Representatives gave its verdict on the character of the transactions reviewed; the action of Jayne and his associates; and the treatment of the firm of Phelps, Dodge & Co. and other merchants by the Government, by passing the bill without one dissenting voice or vote; a result almost unprecedented in the annals of American Congressional Legislation.*

#### THE MOIETY SYSTEM.

PASSAGE OF MR. ROBERTS' BILL BY THE HOUSE OF REPRESENTATIVES—A TRIUMPH OF THE MERCHANTS—ARRAIGNMENT OF CUSTOM HOUSE OFFICIALS AND INFORMERS.

[N. Y. TRIBUNE, May 20, 1874.]

The prompt passage by the House of the Roberts moiety bill to-day, without any show of opposition, is an evidence of the sensitiveness of members to public opinion, as well as a complete endorsement of the action of the Ways and Means Committee, in exposing the odious and oppressive operations of the horde of spies and informers who have made the New York Custom House appear like a den of robbers to the merchants of that city. Although the whole day was occupied by debate upon the bill, there was not a single speech made against it; even Gen. Butler held his peace, seeing how useless it would be to try

to stem the current. Mr. Roberts' speech was an admirably clear statement of the evils of the moiety system, and of the effect of the reform proposed by the pending bill. Summarizing its provisions, he said that the bill swept away arbitrary processes for the seizure of books and papers, abolished the moiety system, and substituted for it moderate rewards, provided, instead of a forfeiture of the entire invoice in the case of under valuation, a forfeiture only of the article under valued, and a fine of not exceeding \$5,000, and, in case of the omission of any charges going to make up the value of an article, a penalty of double the value of the article. The object of the measure in brief was, he said, to make all penalties so moderate as to be certain, and to make their collection the result of law, and not dependent upon the favor or vengeance of any officer.

Mr. Beck, speaking as a democrat, was naturally more severe than Mr. Roberts upon Jayne and his tribe. With the materials fur-

nished by the testimony taken by the committee he drew a striking sketch of Jayne sitting in his dismal little den, where the gas light burned all day, setting forth the terrors of the law while dangling a pair of handcuffs before the victim who had fallen into his clutches, and occasionally trying them upon his wrists to increase the terror of the poor merchant, until he had frightened him into complying with his demands. Another sketch was equally graphic and effective; he pictured Mr. Wm. E. Dodge appearing before Jayne and the Custom House chiefs, all assembled, with Butler as their counsel and Senator Conkling seated at Lafin's elbow, expounding the statutes and declaring that the whole invoice was forfeited, but advising his friends to take less than the penalty of \$500,000, upon which they were insisting. Messrs. Roberts and Kasson declared that the testimony of Mr. Dodge did not warrant the statement that Conkling was acting as counsel of the Custom House officials; but Mr. Beck had a part of the testimony read where Mr. Dodge ap-

plied the term counsel very explicitly to the Senator. In reply, Mr. Kasson produced Mr. Dodge's last testimony, in which the witness stated his belief that Mr. Conkling was present by accident, and had no pecuniary interest in the case. Finally, Mr. Dawes came up, apparently as a reinforcement to the Senator's defenders, with an extract from Judge Davis' testimony, which, when read, proved to be more damaging than helpful to their cause, for it showed that Mr. Conkling's interpretation of the law was all against Phelps, Dodge & Co., and in favor of Jayne.

Speeches followed by Messrs. Kasson, Wood, Niblack and Burchard, and at the close of the debate Mr. Dawes took the floor and created something of a sensation by attacking the corruptions of the Custom House, and giving the Administration a few of his dexterous and peculiar back handed slaps.

The passage of this bill, especially with the omission of the third section, is a great triumph for the importing merchants of the Atlantic seaboard.

## ACTION OF THE SENATE.

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The bill as passed the House came before the Senate for consideration on the 9th of June, when a strenuous effort was made by the representatives of the Custom House interest to modify its essential features by amendments, which, if adopted, would practically have rendered the bill of but little value as a measure of relief and reform. All efforts in opposition to the tide of public opinion, however, proved futile, and the Senate after three days' discussion, and rejecting every amendment essentially hostile to the objects sought for by the mercantile community, passed the bill on the 11th of June, with only three votes recorded in the negative—Howe, of Wisconsin; Flanagan, of Texas; and Pease of Mississippi.

The bill was subsequently signed by the President and became a law.

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The following article, entitled "*The Senate and the Moieties Bill*," appeared in the New York *World* immediately after the passage of the bill (as amended) by the Senate:

"THE WORLD'S special despatch on the Moiety Bill, printed Thursday, told the story of a victory won for the merchants in the United States by democratic aid and perseverance. This victory is at present of the greatest significance.

We have time and again exposed the outrages worked by the revenue acts of 1863 and 1867. It was not the moiety clause alone that was involved, for that abuse was the offspring of our tariff laws generations before. The Acts of 1863 and 1867 introduced espionage into the Republic. They were acts that the best lawyers held unconstitutional, because they allowed the seizure of books and papers for the purpose of making a merchant criminate himself.

All that was requisite to perfect the system was to get the instruments to carry it out. These were found. Men, fearless and unscrupulous, were appointed to carry out a hateful law. The consequences are too fresh in people's minds to need recitation. For nearly ten years a hateful system of espionage was carried out in the United States. No trader could be sure that his counting house or his store did not contain a spy hired

by the Government special agent to betray the trust of his employer. No reputation was too high, no fortune too colossal for Jayne and his emissaries to attack. We need not stop to condemn Jayne. He was but the fitting tool employed under a law for which the party in power is alone responsible, that affected the business of the whole country. Well may a whole country be troubled when its commerce, embracing some thirteen hundred millions annually, is handed over to the inspection of official spies.

We are bound to admit that the evils of smuggling and under valuations are more common in the United States than in any other country on the globe. These evils are inseparable from the high duties we exact. They are evils growing out of evils. When foreign silks were entirely prohibited in England the enlightened Mr. Huskisson pointed out in the House of Commons that three fourths of its members wore some article of foreign silks on their persons. It is in human nature that the greater the gain the greater risk will people run in obtaining the reward. Macaulay well pointed out that the most stringent laws against clipping the

coin of England only increased the evil. So we have seen that no terror of the revenue law, no confiscation, stopped smuggling or under valuations in the United States.

We also submit that in the eleven years during which this hateful law has been on the statute books hardly any collusions with customs officials have been punished. As Jayne complained before the Congressional Committee, the thieves are left in office, and he (even Mr. Jayne, observe,) was forced to quit it. The fact is, detectives did not search for evidence of guilt in the places where it could easily be found. It was not the appraiser's offices which were put under surveillance. What appraiser, what subordinate officer during the last eleven years has been sent to the State prison for collusion in defrauding the Treasury? These men were rewarded for their own thefts, and shared in many cases the informer's moiety. Weighers suspected by Jayne were put on the watch and gave up their principals, the merchants. Jayne became the informer, made the merchants pay, and not only let the dishonest weighers escape but rewarded them besides. Again, the infamous spy system in the stores of merchants threatened to become seated, because lawyers of repute and national legislators took the spies under their protection. When the thief who stole a firm's letters and papers, and informed against it, was rewarded with \$65,000, he found imitators by the score, and the proudest and most straightforward merchants trembled before their own servants.

Systematic under valuation and smuggling flourished under Mr. Jayne's nose. Jayne himself admitted the fact. The many millions squeezed from merchants did not come out of the pockets of those who had cheated the Treasury out of hundreds of thousands of dollars. No. They came from mercantile houses which were in default, one, two, or three thousand dollars. Naylor & Co. have now a suit pending in which the under valuation is \$160, and the suit calls for a quarter of a million, we believe.

The laws of '63 and '67 were a trap for merchants. Under these laws the juries were invariably charged by the judges that the *intent* to defraud was not for them to decide; all they had to say was whether a violation of the law had taken place (as technically it always had); that the intent must be left to the decision of the Secretary of the Treasury, who would perhaps graciously remit the fine. The result has shown that the prudent merchants shrunk from Custom

House lawsuits, and preferred to pay hundreds of thousands in fines. Rumors of these tyrannical abuses were rife in 1871-72. A Senate Committee to investigate them was sent to New York, and sat in Washington. Messrs. Buckingham, Pratt, Howe and Stewart declared that all the reports were exaggerated; that trivial abuses were inseparable from the stringent execution of the revenue laws. In fact, they plied the whitewash brush with great vigor. Two democrats on that committee, Messrs. Bayard and Casserly, in a minority report pointed out the abuses of the law, the tyranny and robbery that were carried on under the flag of the United States. We printed last Tuesday a portion of Mr. Bayard's examination of Jayne and the remarks of the committee. Testimony in 1872—which has been found but too true in 1874—told how the spy system flourished in the land.

But, as the Presidential election was at hand, the Schultzes and Dodges had time to consider or ponder over the minority report of Bayard and Casserly. The Phelps, Dodge & Co. outrage, soon followed by the case of Messrs. Woodruff & Robinson, roused the hitherto secure merchants, and a burst of indignation which was almost universal was the result.

We need not follow the vicissitudes of the Moiety Bill. It is well known that Messrs. Beck, Wood and Niback were the fiercest denouncers of the national scandal, both in the Ways and Means Committee and in the House. The bill, however, had a multitude of friends in the House. In that assembly it was a question of Butler and tyranny, or justice to commerce, and so high did the indignation run that even Butler had nothing to say in favor of retaining the spy system. Not so in the Senate.

Mr. Conkling has with Christian resignation swallowed some humiliating remarks made by Mr. Beck, not to his advantage, and he may hear even more hereafter. Mr. Conkling did his utmost to defeat the bill. He was seconded by Howe, Pratt, Chandler, Sargent, Stewart, Buckingham, Hamlin, and a few more of that class. Senator Sherman, who had the bill in charge, was but a lukewarm friend to it. And the bill would have failed in the Senate, as three measures of relief had done before, had not one man used his indomitable energy, perseverance and tact to carry the measure. To Senator Bayard chiefly the merchants are indebted for the success of the bill.

# DEBATE IN THE SENATE.

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## REMARKS OF SENATOR SCOTT.

In the course of the debate, on propositions to restore to the officials of the Government the power to seize and examine a merchant's books and papers and otherwise amend, Mr. Scott, Senator from Pennsylvania, said :

Mr. President, as the chairman of the Committee has already stated, this section received as much, if not more consideration in Committee than any other section of the bill ; and I desire to say a few words both upon the section itself and upon the general subject which has given rise to it.

I think, as the Senator from Iowa has said, we are perhaps in danger of going to extremes upon both sides of this question in consequence of recent events. Public feeling has been very much excited over the allegation that books and papers have been arbitrarily seized with bad motives in many cases, and, on the other hand, complaint is made that dishonest persons have violated the revenue laws, against whom no penalties can be enforced unless there can be just such an arbitrary seizure as is complained of. I think there have been many violations of the revenue laws which have never been detected or punished ; but I do not agree that it is necessary, in order to reach them, that arbitrary seizures should be resorted to.

The principal case out of which this feeling has arisen has been generally denounced as an arbitrary seizure of books and papers. I refer to the case in which the books of Phelps, Dodge & Co. were inspected in New York ; and for the purpose of ascertaining the true position both of the man who has been denounced for that seizure and of the firm which is alleged to have been wronged by it, I have looked into the testimony relating to the production of those books ; and I deem it my duty here to do justice to both parties involved in that transaction, and in the light of its facts make the effort to determine what legislation is required by true public policy.

No man in this country enjoys a higher reputation than William E. Dodge, and I hold that it is hardly worth while for a man to make a good reputation through a long life, unless he is to get the benefit of it both in



his private affairs and when arraigned as a wrong-doer before the public. It would take a very strong statement from any quarter, sustained by the most undoubted evidence, before I would be willing to impute for a moment any actual or intended violation or evasion of the laws of his country by a man who has sustained, and who, as I believe, has deserved the reputation which Mr. Dodge enjoys.

But, Mr. President, upon looking at the transaction by which it is alleged a great wrong upon him was perpetrated, I find that his books were not seized, in the ordinary sense of that word, at all ; but the special agent, Jayne, whose acts have been the cause of so much public comment, looking back for five years over the invoices furnished to him by a dishonest clerk in the house of William E. Dodge & Co., found a large number of under valuations upon these invoices, as was alleged—under valuations which no man who examines the whole case will suppose were made for the purpose of defrauding the revenue. The same books from which those under valuations were taken would have shown invoices upon which over valuations were made to an amount as large as the under valuations, and the firm of Phelps, Dodge & Co. there is no doubt paid to the Government as much revenue upon the over valuations in their invoices as the Government was deprived of by those which had under valuations in them. But this clerk, let his motive be what it might, furnished to Jayne, the special agent, the invoices which showed the under valuations, withholding those which showed the over valuations, and upon the face of them Jayne found that the firm of Phelps, Dodge & Co. would be liable, upon a strict construction of the revenue laws, to penalties which would amount to about \$1,750,000, being a forfeiture of the whole valuation of all the invoices in which the under valuations of a few articles had occurred.

Finding this to be the case a suit was instituted, and notice sent to Mr. Dodge of what this agent had found. It came upon him, as he says, like a thunderbolt; and no man can wonder that it did. No man holding the position which he did in society could be otherwise than alarmed and astounded at being charged with a fraud upon his Government of this extent. He went into the presence of this special agent, in a place which he describes as a dark hole in the Custom House, lighted up by gas, and there, with the district attorney present, he was informed of what was charged against his firm—that they had imported goods with invoices in which under valuations occurred that would make them subject to these penalties. Mr. Dodge is an honorable man. He averred that he was guiltless of any intention to defraud the Government; but upon this statement being made to him that their books and papers would show this under valuation, and a charge being made, according to his statement, in

language and spirit certainly discreditable to this man Jayne, and under circumstances calculated to inspire terror, he, as an honorable merchant, instead of awaiting the process of having his books ordered into court, proffered to waive all the formalities the law required and place his books at the disposition of Mr. Jayne and of the district attorney. They were then carted away from his store without any judicial order, but upon his own agreement that they should be taken.

Unwilling to go into court where, upon the technical letter of the law, without any dishonest intention, his firm might be subjected to a penalty of over \$1,000,000, smarting under the allegation of fraud which was made public and sent abroad to Europe, under which his firm there was suffering, under which one of the members was suffering in reputation and mentally—such suffering as can be appreciated only by a high toned, honorable man, who has had his character blasted before the public—with all the considerations pressing upon him, rather than go into court and incur the risk of paying a penalty of \$1,700,000 for a technical violation of law where no fraud was intended, he paid a penalty equal to the actual valuation of the goods upon which the under valuation took place. The actual valuation of the goods, remember; not simply the duties upon them. The duties, if I recollect aright, and I will not be responsible for exact figures, upon the whole under valuation would only have amounted to \$1,600. The items of actual under valuation amounted, in a business of five years, covering between three and four hundred millions of dollars, to only about \$6,000, upon goods which, in the aggregate, amounted to \$271,000, and the ease was compromised by paying that amount.

Mr. President, it was a gross wrong; but the wrong was in the law. We are seeking to remedy it.

Mr. President, I am not here to apologize for this man Jayne; I am not here to become the advocate of any party in this transaction; but I am here to do justice to both these parties, and to see what provision we ought to insert in the public law for the purpose at the same time of protecting the honest merchant, of punishing the dishonest, of collecting the revenues, and imposing and enforcing the penalties and forfeitures that are incurred by actual intentional fraud.

#### REMARKS OF SENATOR BOUTWELL.

Mr. President, upon the general question of abolishing moiety, I expressed an official opinion more than four years ago, in my Annual Report as Secretary of the Treasury to Congress in the year 1869. I thought then

that I foresaw some of the evils that have since been complained of. On the 25th of May, 1870, I submitted to Congress a bill for the abolition of the moiety system, coupled with a bill to establish the salaries of the Custom House officers; and again in 1870 I urged the abolition of the moiety system; and I think that experience has shown that either of those years would have been a more fortunate time for the consideration of the subject than the present. While I have seen many things and experienced a good deal which would lead me to change my opinion, nevertheless, I adhere to it that the moiety system is a bad system and ought to be abolished. Nor is that opinion derived altogether or even chiefly from what are alleged to be the evils under which the commercial community suffers; but rather on account of the evils that it brings upon the administration of the law, and the difficulties and dangers to which those who are called to administer the law are exposed.

I have been reluctant even to say one word before the public touching any matter concerning which I have been officially concerned, and I do not know that I should have risen to say a word this morning, except for the remarks made by the Senator from Pennsylvania. I have no judgment to express as to the character and conduct of the firm whose name he has mentioned in the presence of the Senate; but I wish to lay before the Senate certain facts, which I think relieve not partially but altogether, which justify not only with qualification and apology, but without qualification or apology, what was done in reference to the claim that was made upon that firm. Personally, I have nothing of which I can complain. I believe that the senior member of that firm, in whatever he has said, either in private or in public, has been altogether favorable to the part I had in the transaction to which public attention has been directed. But I think that the vindication of the course of administration is of more consequence than the vindication of any private person.

Now, what were the facts? On the 27th day of December, 1872, or perhaps a few days prior to that date, a person who had been in the employ of this house, having first been to an attorney in the city of New York not in any way connected with the Government or representing it, came to the special agent and laid before him what he called evidence of the under valuation of goods imported by this house. He not only made statements, but he presented documents which went to show the truth of his statements, and when these documents were compared with the books of this house, when they had been surrendered for the purpose of examination, the evidence was conclusive that those papers had not been tampered with in any way; that they were originals; that they were genuine; that they had been taken from the books of this firm by this man; and whatever may

have been his motive, or whatever the character you may attribute to him, it has never been proved—I think not even suggested, but if suggested never sustained by any proof—that the agent of the Treasury Department had any knowledge of the relations of this unfaithful clerk to his house until he appeared before him with these papers, after having consulted with counsel, whom he had privately employed, and who was in no way connected with the Government.

What was this special agent to do? I have before me a statement which contains a minute of thirty-six shipments of goods—tin plates—commencing early in January, 1871, ending in March, 1872; thirty-six shipments upon different vessels, or perhaps, in some instances, shipments upon the same vessels on different voyages. Each one of those shipments shows a difference between the Custom House invoice, on which duties were paid, and the private invoice, in the same handwriting with the regular invoice presented by this unfaithful clerk to the special agent, and when compared with the stubs from which they were torn, matched exactly with the books then in possession of the firm; and when these books were given up on the 27th day of December, 1872, by consent, what was the special agent to do? Attribute to him any character you please; he had his statement before him of thirty-six shipments of tin, with a public invoice, found at the Custom House with a private invoice in the same handwriting, obtained confessedly from the books of this establishment. What was he to do? Can anybody say that he was to do anything except to proceed in the regular way? If he had done otherwise he would have been condemned by the whole country. The matter was laid before the district attorney, and the district attorney, acting upon his authority, not as an officer of the Treasury Department, but as an officer of the Department of Justice, instituted regular proceedings for the recovery of what was alleged to be due under the law upon a computation, not at the will of any officer, but taking the facts as they appeared, they proceeded to compute and establish and ascertain the legal liability of the defendants.

MR. CAMERON.—Will the Senator from Massachusetts allow me to ask him a question? I desire to know if that agent of the Treasury Department is the same officer who has recently resigned his place.

MR. BOUTWELL.—Certainly; Mr. Jayne—the same person. I do not speak of Mr. Jayne one way or the other, either in defence or condemnation. I only state the facts. Legal proceedings were instituted for \$271,000. About this time—I cannot say what the precise date was—Mr. Dodge called upon me in Washington at my boarding house, out of office hours, and stated in general the difficulty in which he was involved, alleging his innocence, *of which I had no doubt*, excited my unreserved sympathy upon

the representation he made of the difficulty in which his house was involved, and desired to pay the \$271,000 at once and have the whole matter disposed of then and there. I said to him: "This is an impossible thing; an improper, a very unwise thing for you to think of." Upon his assertion of his innocence, I gave him what I thought was legal advice, and good advice, so far as I could give advice as a public officer. I said to him: "If your statements be true, as I have no doubt, you are in no danger either as to money or reputation. Go into court where the testimony can be taken under oath and according to the forms of law. The Secretary of the Treasury has no power; he cannot take testimony; he cannot form a legal judgment. This case can only be disposed of properly in the judicial tribunals of the country, and if it shall turn out, as I have no doubt it will, that these are technical departures from the law, and do not involve any criminal intent, the court will so certify; and the Secretary of the Treasury, under the statute, then has power to remit the penalty in whole or in part, and such things are frequently done." Mr. Dodge has said since that I gave him good advice. I gave him such advice as I thought a man in his situation should take. He came a second time and I repeated the advice to him, but declined to have anything to do with the adjustment of the matter, as it was in the courts and must be there disposed of.

Mr. SCOTT.—Will the Senator from Massachusetts permit me? I would be glad at this point if he would permit me to read Mr. Dodge's statement on this subject and giving his reason why the advice given him was not followed.

Mr. BOUTWELL.—I have no objection to that although I suppose I know the reason.

Mr. SCOTT.—I have no doubt the Senator from Massachusetts will be glad to have this read. Mr. Dodge states :

And now, before I forget it, I want to do justice to a Government officer who, I think, is entitled to have justice done him in this case. I have regretted very much that from time to time, ever since the settlement, there have appeared in the papers certain hints which would seem to indicate that the Secretary of the Treasury, Mr. Boutwell, did not treat us fairly in the matter. If we had followed Mr. Boutwell's advice, we probably never should have paid this \$271,000. I came on to see Mr. Boutwell. He was sick at his house, and was kind enough to receive me in his room. I stated the whole case to him as well as I could in a very short time, and I told Mr. Boutwell that we had looked this matter over with great care; that if it was a matter between ourselves and the Government, or if it was simply a matter between the courts of the United States and ourselves, and if it were not for the array of power and influence which was behind to make the better appear the worse, we would not hesitate to go into court; but for us to go into court and have a judgment against us for \$1,750,000 and have it telegraphed all over the world that the Government of the United States had sued Phelps, Dodge & Co. for fraud, and had obtained a judgment for that amount, whatever might be the result afterward, the injury to us as merchants would



have been irreparable. Because, however swift the fact may go by telegraph, the result of an after investigation would be very slow to follow. Mr. Bontwell said to me, "Mr. Dodge, I think you had better go before the court, and I will assure you that if it comes back to me, as it will come, whatever may be the decision of the court, I will give the matter personal and careful consideration." I thanked him for it. He knew then probably what I did not know, but which if I had known I never would have paid the money. I had no knowledge that there was only \$1,600 involved in the whole case, running over five years, and covering importations to the amount of \$50,000,000.

MR. BOUTWELL.—I did not know anything about how much was involved. I had received no official report of the case at that time. I had only heard a rumor that there was such a case.

Following these interviews there was a correspondence between Mr. Dodge's counsel, Mr. Wakeman, of New York, who was an eminent revenue lawyer, who had been I think four or five years Surveyor of the Port, and who had frequently appeared before the Department in revenue cases, and the Treasury Department in relation to the adjustment of this case. The first proposition made was dated on the 2d of January, 1873, and the two subsequent propositions bore date of 2d January, 1873, but they were not made until some time afterward. They seem to have been dated back to correspond with the first proposition. This first proposition was a proposition to pay \$271,000, and was coupled with a protestation of innocence, and we said in reply that it was impossible for the Department to take money for an alleged violation of the revenue laws when those who were charged with having violated them, and who proposed to pay money upon such charges, themselves protested their innocence, that the Government could not take money from hands that were innocent of any intention to defraud the Government, and, therefore, that proposition was declined.

A second proposition came in which the protestation of innocence was omitted, no admission of guilt inserted—but the protestation of innocence was omitted; and while that proposition was under consideration it was withdrawn before the Department had acted upon it or come to any conclusion as to what should be done. After its withdrawal a letter was addressed by Mr. Dodge himself to the Secretary of the Treasury saying that he had been informed that the Secretary had already reached the conclusion to accept the proposition, and inasmuch as they had made the proposition and the Department had concluded to accept it, he, upon the whole, had concluded to stand by it. I wrote him a letter, which I dictated personally, saying to him that the Department had come to no such conclusion, that indeed the facts necessary to an opinion were not before the Department, and that his withdrawal of his proposition was entirely con-

sistent with any situation of the question as far as the Department was concerned.

But following that at an interval came a third proposition renewing the offer of \$271,000, supported as all the others were by the recommendation of the district attorney of the Southern District of New York in favor of accepting the proposition. This proposition either contained the suggestion or condition, or was accompanied or was soon followed by a letter containing the condition that the receipt should be a bar to all claims of the Government against this firm. That of course was inadmissible. We said that the Department could only accept this money as a bar in any civil suit to those cases which had been examined and reported upon; and that proposition was finally accepted in the amended form, as I understand, although I have no official information on that point. The suit was for \$271,000 and something over, and they consented to pay exactly what the Government asked. This was not a sudden thing. The proceedings were instituted on the 27th of December, 1872—or earlier than the 27th of December, for the books were delivered on the 27th of December. The final proceedings took place the very last of the month of February, 1873. Something like two months or more elapsed while the subject was under consideration. There was no pressure from the Treasury Department upon this house. We delayed, we resisted, we refused propositions, we postponed; they had time for consideration, they had eminent counsel, they acted upon their own judgment——

Mr. HOWE.—Who represented them?

Mr. BOUTWELL.—Mr. Wakeman for one. I understood other counsel were employed. Mr. Wakeman was an eminent revenue officer, and, by his letters and appearance at the Department, by his interviews with the officers of the Department, he manifested an interest in the affair equal to any which an attorney is expected to exhibit.

I have nothing to say about Phelps, Dodge & Co. with reference to this matter. I can understand and I believe Mr. Dodge himself is entirely free from any personal responsibility in this matter. I cannot doubt it. But there is a mystery connected with these transactions. Through a period of more than a year there were under valuations, invoices given at the Custom House on which duties were paid which did not correspond with private invoices in the books of this firm. Therefore, while I do not judge them, I cannot offer anything in their defence: but I do say that the Treasury Department exhibited moderation and consistency. It extended to them not only the leniency which a merciful administration of the law would allow, but the Treasury Department did, from the beginning to the end of the transaction, delay and postpone the payment of this money, for I

can assure the Senate and the country that for myself I was unwilling that a house having the reputation which this house had should pay into the Treasury of the United States \$271,000. But what was to be done? After they had had two months for consideration, after we had made suggestions of ways in which this subject could be judicially investigated, when we three times offered to do what the officers of the law said the law required should be done, what was an executive officer with the law to do? Was he to say, "This money shall not be paid; you do not know your own business; you do not know your own condition?" After two months' delay, after they had the benefit of eminent counsel, after they had had suggestions as to a different method of proceeding, and after they had not only been invited but compelled to go into the courts by the officers of the law and a way pointed out to them by the Secretary of the Treasury how they would escape from every penalty if the Judge, upon the hearing, should say there was no criminal intent but only a technical violation of the law, what was the Treasury Department to do?

Mr. President, in this statement I have done more than I designed to do. I should probably have said nothing except for the remarks made by the Senator from Pennsylvania; but I believe that if the law was ever honestly administered, was ever mercifully administered, ever administered with reference to the rights of the defendants, if ever defendants were cautioned and put upon their guard, this was the case and these defendants were the parties.

#### REMARKS OF SENATOR EDMUNDS.

If the Senator will allow me, in the direction of which he has just been speaking about the adequacy of the punishment for under valuations, etc., and in connection with the case of Phelps, Dodge & Co., which is the capital on which the enterprise of this bill proceeds in the business of legislation, I should like to have the Secretary read from the official copies from the books of Phelps, Dodge & Co., voluntarily surrendered, as it is here stated, for examination on the 27th of December, 1872, the record which no doubt illustrates the strength of this bill in protecting the innocent virtue of these people against the cruel tyranny of the officials of the United States better than any amount of rhetoric, even from the mouths of the distinguished orators who support this bill, can do. The headings are—and then I will ask the Secretary to read the rest—

Mr. SHERMAN.—I think to have a long document read and interposed in a debate like this is rather outside of the question. I want to reaffirm what I said, and to prove that in the very cases cited, taking each offence, the twelfth section of this bill provides a superior penalty. That is the question between us. It is a question now of the correctness of figures.

Mr. EDMUNDS.—The Senator undoubtedly will have time for that, and in order to aid him (because I must do good to him even against his will, if I have the right to do that) in coming to this question of accuracy, I will give him the exact entries in the books of these innocent people, whom our agents have so cruelly wronged, and which has brought forty millions of people to blush with shame, I believe somebody said, in order that he may see precisely how the thing occurred. If it is not precisely in point, as it appears to me, it will at least be—and the Senator will agree with me so far—useful in another way. The learned Mr. Saunders, who always hated the civil law, as the Senator well knows, and who was a great common law lawyer, in arguing a great case one day before the court of king's bench, found it greatly to his advantage to cite an authority from the civil law; but inasmuch as he was a known opponent of the civil law, and insisted that it ought never to be introduced in principle or practice into the jurisprudence of Great Britain, he found it difficult to preserve his consistency in referring to the authority; but he got round it, as the Senator from Ohio would on a similar occasion, after he had produced his Justinian, or his institute, or his digest, or whatever it was, by saying, "If it please your honors, I bring this to your honors' notice, not as an authority in our law, but as an ornament to discourse." [Laughter.] Now, if this inventory is not precisely in point to the view of my honorable friend from Ohio, certainly it will be a flourishing ornament to the discourse that he is about to make about the virtue of Phelps, Dodge & Co.

Mr. SHERMAN.—That is very well put.

Mr. EDMUNDS.—I have put it just as the invoice does; it has two faces. [Laughter.]

This invoice, I say, is the real genuine thing, as it appears from the Treasury Department—a statement of the contents of the books of Phelps, Dodge & Co., surrendered by them voluntarily in the exuberance of their established virtue for examination, between the 25th of December, 1872, and the 1st of January, 1873, that holy Christmas time when all the world is glad that honor, virtue and prosperity are spreading themselves all over the world. It is headed first "date." It is put in a tabulated form, which, to be sure, interferes with the rhythmical unity which their ansaction itself so really deserves to be put in; but it is put in tabulated form and I must take it, as I am not a minnesinger, as it is. The Senator from Ohio, no doubt, can put it into measure, which will make it much more agreeable reading than it is now. Here it is. First is the column of the date of the entries in their books. Second is the name of the vessel in which the importation was made. Third is the mark which each package had' put upon it for identification. Fourth is the description of the contents of each package of

goods. Fifth is the Custom House invoice, a bland and delicious name, implying of course that everything is public and fair, that the open door of the public buildings of the Government where the appointed officers sit at the customs are to be emblazoned by this statement put up by Phelps, Dodge & Co. as the real cost of their property which they had brought into the country. Then next comes what the Senator from Ohio may think is a peculiarity, the private invoice. Next comes the difference in value between the two, and then the total amount of the invoice.

I will not, of course, take up the time of the Senate in reading it clear through, but I will take one or two specimens just to illustrate how it runs. On the 28th of January, 1871, by the City of London, came a package marked S in diamond, and carrying an Asiatic name, I suppose. I believe the island of Banca furnishes some tin; if I am wrong about that my honorable friends of the Finance Committee can correct me; I do not profess to be wise in tin, either in the metaphorical sense of dollars, or in the commercial sense of the article these gentlemen dealt in; but the word is Pontymister, and I suppose it to be a manufactory in the island of Banca. Very likely I am wrong, but if so, I can be corrected. Then come the goods, "171 boxes tin plates 2 b B. T." How thick that is the Senator from Ohio can inform us. Then comes the Custom House invoice, and the entry in pounds, shillings and pence is £531 15s. 0d. Then comes the "private invoice, £548 13s. 0d.; difference in value, £17 2s."

Here, then, you have a firm of people whose wrongs are to be redressed by this bill, who have been made the innocent victims of a cruel and illegal tyranny, who hold out to the United States and swear to it one paper, which affirms that the cost of that article of tin was £531 11s., while they receive and post in the same book of invoices, so that the two are brought side by side, another invoice, which is the true one, stating that the cost of that article was £548 13s. In one hundred and seventy-one boxes of tin the cause of virtue, and good morals, and public revenue, and the progress of society require the virtuous citizen to declare, for the purpose of taxation, that the cost is one sum, and for the purpose of his private gain, to have the truth, that the cost is a greater sum by £17, and to swear to the false invoice as the true one. That is what the honorable Senator from Ohio evidently considers to be a virtuous example for a good citizen, who intends to promote the welfare of trade and honesty toward his brother importers and good morals in society everywhere, to set.

Mr. President, I did not rise to comment upon this sort of thing. I am only stating the case, word for word and letter for letter, according to the examination of these books, the authenticity of which was not questioned, surrendered by this firm itself, where the members of the firm swear to the



Custom House officer that the cost was one sum, when by their own invoice and in their own books, side by side with it, is the true invoice, which confessedly was the true sum, a great deal larger.

Mr. SHERMAN.—I am not the defender of Phelps, Dodge & Co. They are not my constituents, nor have I anything to do with them. A question arose between the Senator from New York and myself, and I say now the penalty recommended by Mr. Stewart is exceeded in amount in this particular case, taking this particular case that is used by the Senator from New York as an illustration; that in each case the penalty provided in this bill exceeds that proposed by Mr. Stewart. That is the point I want to get at. Take each of these offences of which Phelps, Dodge & Co. are said to be guilty; I know nothing about them; and I say the penalty under this bill exceeds that suggested by Mr. Stewart.

Mr. EDMUNDS.—The Senator says he is not the defender of Phelps, Dodge & Co. I beg to know if I am mistaken in the supposition that I have entertained that this bill was being pushed here on account of the wrongs that had been committed by the Government of the United States or its agents against this very firm, in respect of these transactions among others? Will anybody say that it has not been? I should not have dragged the name of any private citizen into this discussion, however guilty he might be. The tribunals of his country, if he had found it convenient to submit himself to them, would have been able to ascertain whether he was guilty or not, and I should have been the last man, I hope, or among the last, who would ever have referred to the guilt or innocence of anybody who might be suspected or charged with crime in a place where he could not have the opportunity to answer or be tried. But these parties not being in court, having got out of court in a way that we all understand, right or wrong, when it is said they are virtuous, and that the law as it stands has been made an instrument of tyranny and oppression in defrauding innocent citizens of their just, and constitutional, and business rights, then I am forced to see what the truth really is.

It does not do, therefore, for the Senator to say that the matter of Phelps, Dodge & Co. has nothing to do with this business, and he is not their defender. He is promoting this bill upon the ground that the law as it stands has been made the instrument of tyranny against these men—that it has been the engine of oppression—not because the law as it stands was right, and had been violated by the acts of Jayne, and the Secretary of the Treasury, and the District Attorney. Nobody contends that they went one step beyond the law; but he says that the law has undertaken to interfere with the business of innocent and virtuous citizens, who have not been guilty of any violation of it, unless it may be a technical one, which is

pressed to their disadvantage. Therefore, I say I am forced to point to the moral of what was so well said by the Senator from New York, and to ask your attention to the undisputed fact, sad as it is, that in the books of this company, side by side, systematically placed there, are found invoices of this great article of trade, the difference of a shade in the price of which enables a great house to command the trade of the country and destroy that of their competitors; not one instance, not ten, not twenty, but a hundred, where there is this continuous falsehood from day to day deliberately entered, the truth upon one side and the falsehood upon the other; the false invoice every time presented and sworn to at the Department, and the true one every time placed by the copy of the false one in the books of this firm, in order that their private transactions might be guided by it.

If this is the virtue that the Senator defends it is not mine. If that is the public prosperity which he wishes to promote, it is not a prosperity in which I wish to share. I know it is not that in which the Senator wishes to share; but he has been carried away, as we are all sometimes carried away on the wind of a clamor, and in order to overcome clamor he destroys the fundamental foundations upon which Alexander Hamilton and the fathers of the Republic placed the law in order to protect innocence and to punish vice.

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#### COMMENTS OF THE PRESS ON THE SPEECH OF SENATOR EDMUNDS.

As pertinent to the subject, attention is here asked to the following review of the above remarks of Senator Edmunds, which appeared in the columns of the New York *Evening Post*, June 15, 1874:

"The *Times* this morning prints nearly a column of the speech which Mr. Edmunds, of Vermont, made in the Senate on the 10th instant, during the debate on the Moiety Bill. The essential part of his remarks, however, is not given by the *Times*.

Senator Edmunds took the ground that Messrs. Phelps, Dodge & Co. had defrauded the Government in the amount of tax paid by them on importations of tin. He was provided with a list of what he called the 'invoices,' under which the requirements of the Custom House had been violated, and from this list he selected the following as a specimen of the nature and amount of Messrs. Phelps, Dodge & Co.'s alleged fraudulent transactions:

"I will not, of course, take up the time of the Senate in reading it clear through, but I

will take one or two specimens just to illustrate how it runs. On the 28th of January, 1871, by the City of London, came a package marked S in diamond, and carrying an Asiatic name, I suppose. I believe the island of Banca furnishes some tin; if I am wrong about that my honorable friends of the Finance Committee can correct me; I do not profess to be wise in tin, either in the metaphorical sense of dollars or in the commercial sense of the article these gentlemen dealt in; but the word is Pontymister, and I suppose it to be a manufactory in the island of Banca. Very likely I am wrong; but if so I can be corrected. Then come the goods, '171 boxes tin plates 2 b B. T.' How thick that is the Senator from Ohio can inform us. Then comes the Custom House invoice, and the entry in pounds, shillings and pence is £531

11s. 0d. Then comes the 'private invoice,' £548 13s. 0d.; difference in value, £17 2s."

Senator Edmunds assures us that he knows nothing about tin, but he undoubtedly felt confident—a feeling for which he had abundant reason—that no such assurance was necessary in respect to his acquaintance with geography. To transfer "Pontyminster" from Wales to the Island of Banca is a feat which might well cause an elevation of the eyebrows on the part even of a board of Civil Service examiners.

The inexactness which appears to be the leading characteristics of Senator Edmunds's geographical knowledge is equally apparent when he speaks of the documents in which he finds such conclusive evidence against the business integrity of the house of Phelps, Dodge & Company. He describes these documents as "invoices," whereas they never have been, and never can be properly regarded as "invoices." They are simply memoranda of tag ends of contracts which were made months, and some of them a full year before the documents were written. But we imagine that Senator Edmunds endeavored to deliver himself from all such criticisms by the general confession of ignorance which he artfully put into the body of the speech, as follows: "Very likely I am wrong; but, if so, I can be corrected." True; but when a Senator of the United States undertakes to examine a specific case of fraud, affecting the business credit and personal reputation of the firm accused of having committed it, it does not seem to be unreasonable to require him to speak with a moderate degree of accuracy.

But we will adjust our language to Senator Edmunds's knowledge, and consider his facts. He says that here is one "invoice" in which the amount is given at £531 11s. and another in which the amount is given at £548 13s., the difference between the two amounts being £17 2s. The first ~~is~~ sent to the Custom House and the other is not seen outside of the

firm's counting room. That is to say, in an "invoice" of £548 13s. or \$2,743, the difference between the contract price and the actual market value amounted exactly to £17 2s. or \$85.50. This sum of \$85.50 represents the amount of the under valuation, on which a duty of twenty-five per centum ought to have been paid. Twenty-five per centum of \$85.50 amounts to \$21.37½, and that is the enormous sum which Messrs. Phelps, Dodge & Company made out of this transaction. On an "invoice" of goods valued at \$2,743 a mercantile house of fifty years' standing, which transacts business annually to the amount of twelve millions of dollars, saves what is almost exactly three quarters of one per centum.

One requires the brain and the conscience of a Jayne to see in this transaction, viewed merely as a matter of business, any fraud. There was an error, we admit, but there was no intention of cheating the Government. The facts, as cited by Senator Edmunds, show that there was no motive for fraud. Whether considered as money kept out of the United States Treasury or as an advantage to be gained by Phelps, Dodge & Co. over their fellow merchants, the sum of \$21 37½ is too small to afford the shadow of a suspicion of an intentional violation of the law. These minute errors, covering a period of five years, altogether amounted to less than two thousand dollars. During the period the firm transacted business to the amount of, say, fifty millions of dollars. As two thousand dollars, therefore, is to fifty millions of dollars, so is the chance that Phelps, Dodge & Company intended to cheat the Government.

But as two hundred and seventy-one thousand dollars is to nothing, so is the desire of certain Senators for the "sinews of war" hitherto provided by the Custom House for carrying the elections. Senator Edmunds's remarks, as published in the *Times*, simply show how valuable two hundred and seventy-one thousand dollars are for such purposes."

And on the 6th of July following, the statements and exhibit of Senator Edmunds having been again brought forward in the House by Gen. Butler, the *Evening Post* again resumed the discussion of the same subject as follows:

"In a former article, in discussing this case of Phelps, Dodge & Co., we cited an illustration of the iniquity of the moiety system. Four shipments of that firm, wherein, upon a discovered loss to the revenue of \$61.44, they were mulcted to the amount of \$5,530.33, and were liable to a seizure of \$107,749.42, for

which whole amount Senator Conkling advised that suit should be brought against them.

As additional food for reflection, in reference to a system, the reestablishment of which will be attempted whenever the merchants relax their vigilance, we append a table

of eight additional shipments of the same firm, as exhibited in the Senate during the debate of June 10, in which Senator Edmunds made his chief argument :

Table of eight shipments by Phelps, Dodge & Company, showing the amount of loss to the Government in revenue, amount of the invoices confiscated, and the grand total amount liable to seizure:

Dates and Sh. ps.	Boxes Tin Plates.	Amount of invoice confiscated in dollars.	Amount of under valuation in dolls.	Actual loss to the revenue in dollars.	Total amount of invoice liable to confiscation in dollars.
1871. May 30. Nem'sis	85	\$1,424 50	\$47 31	\$11 82½	\$17,316 68
June 6. C Wash.	169	1,926 68	102 06	25 51½	} 20,498 75
Do.	101	1,383 06	53 56	13 39	
Do.	23	382 50	13 25	3 31½	
June 14. C. Bklyn	323	3,889 75	174 25	43 56½	14,625 06
June 19. Calabria	108	850 00	27 00	6 75	} 20,171 12
Do.	62	539 50	15 50	3 87½	
28th. China	217	1,644 68	50 81	12 70¼	11,400 12
30th. Parthia	35	1,029 27	31 77	7 91¼	22,318 81
July 10. Algeria	32	1,111 62	35 50	9 12½	26,020 36
Aug. 14. Algeria.	7	107 18	2 18	54½	} 16,185 28
Do.	2	28 12	1 12	28	
Do.	145	833 75	36 25	9 06¼	
Do.	56	557 08	2 58	64½	
Do.	172	1,527 12	54 88	13 72	
Total.....		\$17,234 81		\$162 23	\$167,536 18

By this table it will be manifest that, upon a total shipment of \$167,536.18, there was a loss of revenue to the Government of \$162.23, a confiscation therefor of \$17,234.81, and a liability to confiscation of nearly ten times that sum. This loss of \$162.23 is about the amount of a month's wages which the firm would have paid to a head porter or to an under clerk. The mistake of \$162.23 gave them an advantage of less than ten cents on every one hundred dollars of the whole amount of the shipment. Yet it was gravely argued by Senator Edmunds, and passionately declaimed by Mr. Butler, that this was conclusive of fraudulent intent on the part of the firm;

that is to say, that, for a gain of less than ten cents on a hundred dollars (which was much more than offset by similar mistakes made against themselves and in favor of the Government), a firm of the standing of Phelps, Dodge & Company would wilfully expose themselves to public disgrace and to the forfeiture of \$167,536.18.

We do not expect Mr. Butler to reconsider his accusations, for he made them as the agent of Jayne, and from personal spite; nor do we ask Senator Conkling to do so, for he was of opinion that it was not enough to mulet the firm in the sum of \$17,234.81 for the mistake of \$162.23, and that the whole amount of \$167,536.18 should have been sued for. But we do appeal to Senator Edmunds, good lawyer and legislator as he generally is, to consider whether he has not something to retract, in duty to his own intelligence and conscience. Is it possible, for instance, that Senator Edmunds does still conscientiously believe that on the 30th of May, 1871, the firm of Phelps, Dodge & Company did wilfully intend to cheat the Government out of \$11.82½ on their shipment of \$17,316.68 by the Nemesis? Does Senator Edmunds, after a month's interval for reflection, feel no qualm of regret when he remembers that he, himself, exhibited these figures in the Senate, and argued that they showed deliberate fraud upon the part of the firm? Does Senator Edmunds not feel ashamed of the laws of his country, and of his own attempt to resist their appeal, when he remembers that, for this mistake of \$11.82½ in an invoice, the sum of \$1,424.50 was extorted from the firm, and half of it was divided up in spoils to a man like Jayne, and in perquisites to the Collector, Naval Officer, and Surveyor of the Port of New York, and that a fellow Senator recommended that steps should be taken to swell the \$1,424.50 to \$17,316.68? Has Senator Edmunds nothing to take back when he remembers that Jayne, after searching with the scent of a terrier and the hunger of a panther through the papers representing importations of \$50,000,000, could find errors (like this of the shipment by the Nemesis) to the amount in all of only \$1,600 in favor of the firm and against the Government, which were counterbalanced, as stated by them, by errors fifty times larger, made by the firm in favor of the Government and against themselves?"

## FURTHER PROCEEDINGS IN THE HOUSE.

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From the very commencement of this investigation in respect to moieties and seizures before the Committee of Ways and Means, it was generally anticipated, as well as currently reported, that Gen. Butler, who it was admitted had acted as counsel for Jayne in his arraignment of Phelps, Dodge & Co., and as such had directly or indirectly shared in Jayne's p'under of the firm, would take an active part in the proceedings. In this anticipation, however, the public were temporarily disappointed. Gen. Butler, although the opportunity was offered him, did not appear before the Committee. He also remained silent when the bill repealing the laws under which his client Jayne had acted was reported to and acted upon by the House; and subsequently, when another bill repealing the laws under which another client and *protege*—Sanborn—had drawn large sums from the Treasury, for nominal and unnecessary services, he absented himself altogether from the House, under the plea of sickness. How this conduct on the part of Gen. Butler was regarded by the press is illustrated by the following extract from the Washington correspondence of the *New York World*, under date of June 20, 1874 :

"This versatile actor was originally cast two months ago for the more serious dramas known respectively as the Moiety Investigation and the Sanborn Swindle; but the actor had grave misgivings lest he would cut a sorry figure in these weighty pieces, and adroitly pleaded sickness, the common excuse of the profession, from the *prima donna* down to the jack-a-pudding. General Butler fully succeeded in deluding his expected audience for full two months. It was gravely given out that the Essex statesman was passing gall stones through his body for a diversion; and to keep up the joke he actually sent a doleful and rather pious letter to the Chairman of the Ways and Means Committee,

pleading in most saintly language that life and health are in the hands of Providence alone.

The letter smacked very much of a desire to be at peace and good-will with his fellow men of all stripes and breeds. But no sooner was the moiety bill passed through the House, and the Sanborn bill disposed of, when General Butler came into the House like a playful kitten. Not only was he sprightly in his wit, but his physical bearing never showed greater sprightliness. Not a day had passed since the Sanborn bill was disposed of, and General Butler showed his miraculous cure by cracking his terribly sharp wit over two or three members at a sitting."

The anticipations of what Gen. Butler would do, based on his private conversation and threats against the firm of Phelps, Dodge & Co., were also set forth about the same time in the following humorous editorial, by the *New York Evening Post* :



## A NEW FASHIONED CATAPULT.

It is reported from Washington that at a very early date there will be erected in the House of Representatives a novel battery, intended to throw mud to a great distance with immense effect, and it is said that a celebrated Major General is the sole inventor, as he will be the sole engineer of this tremendous machine. The fortress to be demolished and captured by the new engine is the one which is garrisoned by the well known firm of Phelps, Dodge & Co.

It will be remembered that this same fort was captured by strategy and treachery a year ago, some subordinate officers betraying the stronghold. At that time the citadel had to be ransomed for the amount of \$271,000. Since then the garrison have thrown up strong entrenchments; and they now stoutly maintain that, like the defenders of Metz, they never would have surrendered except for treason. It is mainly for this boast, and for the reason of their not acquiescing in the consequences of their former betrayal, that the great military chieftain is determined to reduce the stronghold once more, and this time by the effectual process of his patent

mud battery. He has laid in an immense supply of mud for ammunition, which is supposed to have been dug out of the celebrated Dutch Gap Canal. The guns have been furnished by the well known Custom House firms in this city, which are so celebrated for all kinds of brass castings.

The chieftain confidently believes that with his mud battery he can not only damage the fort itself, but that if judiciously discharged, and not exploded like a powder boat, it will spoil and bespatter the dresses and even the faces of the household of the garrison, including women and children, and not even sparing the family vaults of the dead. Some scientific men have suggested that there is great danger of such a mud battery's bursting and doing more damage to the engineer-in-chief than to the besieged. But this engineer, with great contempt, points to his own mud-proof condition, and has not the slightest fear for his own safety. Great curiosity is evinced to witness the attack, as there is much scepticism on the point whether this novel operation in warfare is really becoming a decent Christian and honorable legislative body.

During the very last week of the session, however, the "*Moiety*" and the "*Seizure*" as well as the so-called "*Sanborn*" bills having passed the House, Gen. Butler on Wednesday, June 17th, asked of the House that the evening of Friday, June 19th, might be assigned for general debate, with the understanding that he himself would occupy the floor. As no business was assigned for that evening, "the granting of the Hall to Butler," says the correspondent of the *N. Y. World*, from whom we again quote (under date of June 20th), "was pretty much the same thing as granting it to a company of negro minstrels or to a band of Japs who advertise to swallow knives and spoons. The desire to hear Butler was irresistible, but he by no means got the two thirds assent without trying twice for it. Having failed in his first trial, he cajoled the more fun loving Democrats, and assured them that, whatever happened, it would not be a Democratic funeral, but that, contrariwise, they would be called on to participate in a very jolly wake; and accordingly General Butler got the floor for Friday. Since the famous Credit Mobilier report there has not been such a full House assembled at the capitol."

As was to have been expected, the speech of General Butler, made under the circumstances and at the time above noted, was a rearrangement of and an attack on the merchants of New York, and the firm of Phelps, Dodge & Co. in particular, as undoubtedly in his opinion the best method

of vindicating himself and the clientage of spies, informers and fraudulent revenue contractors whom he had, for pay, counseled and protected ; and for scurrility, mendacity and buffoonery was without parallel in the annals of our national Legislature. The following comprises all that part of it which especially relates to the subject matter of this service :

### SPEECH OF GENERAL BUTLER.

Mr. Speaker, failing health and the imperative direction of my medical adviser of the danger of taking part in a debate which might call for a draught upon physical strength, kept me silent upon the debate on the bills repealing the several moiety laws by means of which the collection of taxes had been assured in all civilized nations. The personal enmities and feelings which egged on the prosecution of the investigations of the Committee on Ways and Means have subsided or failed in their specific objects ; personal ambition and hate, which were its impelling motives, have either been satiated or failed in their purposes ; and the bill proposed by the Committee having passed the House without a division, what I may now bring to the attention of the House will not have its weight diminished by the allegation of a desire to defeat an alleged measure of reform for personal or private reasons.

I assume the experiment of abolishing moieties is to be tried. I only desire, therefore, now to raise a warning voice against this experiment as one in the interest of the dishonest and unscrupulous importer and tax evader, against the interest of the people as well as the honest and conscientious merchant.

What, then, is the moiety system ? It is giving certain large rewards to officials or other persons who will take upon themselves the unpleasant task—which is the duty of every citizen, but wholly neglected—of exposing frauds upon the Government and evasions of its taxes by those by whom the law requires they shall be paid. This system has been the machinery for preventing frauds in the collection of taxes in all civilized countries from time immemorial. We derive our laws in this regard, as indeed in all others, directly from England. It was declared in the House, as an argument against it, that the moiety system had been abolished in England. That is true ; but the other truth which caused its abolition was not stated in the same connection—and that is, Great Britain has abolished duties upon all articles of importation save seven only, and upon these her tax is substantially a specific and not an *ad valorem* duty, and she has thrown around those seven articles such safeguards as to compel the honest payment of the imports upon them, while we have imposed duties, generally

*ad valorem*, on three thousand two hundred and eleven articles of importation, of every possible description, and in the value of each of which every custom officer would be required to be skilled and expert in addition to his assured honesty, in order to an accurate collection of the imposed duties ; and, in addition, experience shows that he would have to be still more expert as a detective in discovering and thwarting the many devices by which the just dues of the country are evaded and the revenues defrauded by the skilled, expert, and unscrupulous importer.

It has been said and reiterated, "Why cannot the revenue officers collect all the revenues ? If they are honest and do their duty, what necessity to have informers and detectives?" The answer is a plain one : The more honest the officer the more unsuspecting of fraud, and the more easily deceived ; and you cannot get men for \$1,500 a year who are learned in the whole circle of human knowledge as applied to the many thousand articles of use, necessity and luxury which are imported and taxed by a nation, comprising every variety of climate and every grade of necessity and luxury in its inhabitants, surrounded by a customs line of more than twelve thousand miles, to say nothing of Alaska, over which importations may be made without the payment of duties unless prevented by the customs officers.

Does not this simple statement show the entire impossibility of collecting the just taxes upon this number of articles by the knowledge of the customs officers, to be imported under an *ad valorem* duty founded upon their valuations, or to protect from smuggling so extended a customs line by any practical number of officials ? How, then, can smuggling and the much more extended and injurious crime, the importation of goods by false values, and false weight and measurement, be prevented ? Only by the imposition of penalties so severe that they will make the hazard of the business more than commensurate with the profits.

The smuggler must hide in nooks and inlets, and bring in his goods by stealth under the cover of darkness. Of necessity they are few and of little cost. The fraudulent importer by a false valuation brings in his goods by the cargo, in three thousand ton steamers plying weekly between New York and Liverpool, and passes them through by a bribed officer at under valuation on a perjured invoice of a confederate partner house in Europe, cheats the people of the United States out of millions, thereby becomes a "merchant prince," and covers his sins perhaps by building churches or other ostentatious acts of advertising benevolence which bring trade to his house ; at the same time he lulls the suspicions and blinds the vigilance of the honest customs officer ; for how can he believe that such a benevolent, rich and praying merchant can be getting the means for his charities by

defrauding the revenue, cheating the people out of a million dollars, and giving a thousand in charity that he may not be suspected of the fraud? I hope to convince the House before I get through that this is no fancy picture.

General Butler then entered into a statement touching the exportation of tea in bond free of duty, from Boston to the British Provinces bordering on the coast of Maine, for the purpose of being subsequently reimported to the United States without payment of duty (the total quantity so exported for all purposes from Boston in 1867 having been 338,808 lbs.), and continued:

But this exporting in bond of a few hundred thousand pounds of tea to half civilized islands, as I have said before, is but a bagatelle in comparison with the amount of frauds committed upon the revenue by false and fraudulent invoices of high cost merchandise. I have, therefore, been at some pains to get for the use of the House some accurate data founded upon statistics, which may be verified by anybody who will take the same pains that I have done, and which cannot be successfully contradicted.

Upon these I make this startling announcement to the House and the country: That the United States does not receive more than *two thirds* of her revenue upon all articles on which *ad valorem* duties are imposed in whole or in part, so that to-day no more than 67 per cent. of our revenues are collected, owing to this class of frauds added to the others of which I have been speaking; or, in other words, if we could collect our revenues according to the present rate of taxation, we could pay off yearly more than one hundred millions of the national debt, imposing no greater burdens on the people than now, because all of these revenues of which the country is defrauded are charged to the consumer as if paid by the merchant; so that by these enormous frauds the country is doubly the loser, first in its revenue, and secondly by the consumer paying it to the fraudulent merchant, generally an importer who has a branch of his mercantile house in this country and in the country from which his goods come.

I would not dare, sir, to make this very startling, nay, wonderful and almost incredible statement as to these frauds of under valuation and false invoices, were I not fortified by proof which I bring to the attention of the House, premising only that great as are the frauds, with all possible penalties, seizure of books and moiety to informers, and all the safeguards that the experience of the Custom House officers of England and this country has enabled us to throw around the revenues of the United States, these safeguards, and penalties, and hindrances to fraud have, by the bill of the Committee on Ways and Means, almost every one of them been removed.

Now to the proof. Let us take a manufacture which has but just begun in this country.

**WORSTED STUFFS**—Fraudulent under valuations in worsted stuffs of all kinds sent from England to the United States are simply enormous, as the subjoined examples will demonstrate :

Combed, not milled worsted stuffs, exported from Great Britain in one year, total number of yards, 154,206,478. Of these there were sent to the United States 48,542,218 yards; to other countries, 105,664,260 yards. Total value, as declared in the invoices to the United States, \$10,324,742.24; to other countries, \$33,331,100.44. Average invoice value per yard to the United States, 21 cents; to other countries where there is no tariff of duties, 39.7 cents. Difference, or under valuation, 47 per cent. Estimated annual loss on duties on this single class of goods, \$3,007,190.40.

**OTHER WORSTED STUFFS.**—Total exported in five months, 85,299,174 yards; to the United States, 28,442,728 yards; to other countries, 56,856,446 yards. Total declared value to the United States, \$5,073,975.28; to other countries, \$18,038,050.80. Average per yard to the United States, 18 cents; to other countries, 31½ cents. Difference, or under valuation, 45 per cent.

The whole needle trade of Redditch and vicinity is carried on on a similar basis. It is like other branches of our foreign trade—entirely in the hands of the foreign manufacturer and his resident agent or partner here, thus defying detection and exposure except by the greatest skill stimulated by the highest rewards. Certain it is that all articles of foreign manufacture and importation shipped to the United States are in quality and cost far better than the average shipped to other countries, and, therefore, the average rate of invoicing should be much higher for the United States, whereas, as we have seen, it is vastly lower. This fact, therefore, clearly demonstrates such under valuation is done for the sole purpose of defrauding our revenues.

To show the accuracy of the conclusion it is only necessary to turn to articles which pay purely specific duties. By their under valuation nothing is to be gained.\* Take for example—

**COTTON GOODS.**—Total of heavy printed cotton exported in the same year

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\* If Gen. Butler had, as he pretended, been animated, in making this speech, by a desire to do justice and discuss the whole subject of arbitrary Custom House proceedings fairly, he would not have omitted to call the attention of the House and the public to the fact that the firm of Phelps, Dodge & Co., as far back as the year 1868 (three years before any charge of under valuations were preferred against them), repeatedly applied to the Treasury Department, and used all their influence with Congressional Committees, to have the duties on tin and tin plates (the articles in respect to which under valuations were subsequently alleged to have occurred) changed from *ad valorem* to corresponding specific duties, and were not able to effect it.



as above from Great Britain, 715,559,642 yards; to the United States, 27,384,430 yards; other countries, 688,175,212 yards. Total declared value to the United States, \$3,258,229.92; to other countries, \$72,224,682.20. Average per yard to the United States,  $11\frac{3}{4}$  cents; to other countries,  $10\frac{1}{2}$  cents.

**LIGHT PRINTED COTTONS.**—Total exported same year, 141,604,328 yards; to the United States, 9,324,688 yards; other countries, 132,279,640 yards. Total declared value to the United States, \$1,151,591 88; other countries, \$13,985,843.07. Average per yard to the United States, 12 cents; to other countries, 10 cents.

Here it will be seen that as soon as we approach goods paying exclusively a specific duty the average rate of invoicing is higher to the United States than to other countries, proving that a better class of goods generally is sent here than to other countries, and leading to the inevitable conclusion that the same difference of higher rates of invoicing would prevail in worsteds, linens, carpets, &c., if they also paid a specific instead of an *ad valorem* or mixed duty. The same facts are true regarding imports from other countries.

**LINENS.**—Exports in one year to the United States, 70,234,347 yards. Total declared value, \$10,507,790.04. Average invoice value, 14.9 cents per yard. Exports same year to France, Prussia and Spain, 7,404,154 yards. Total declared value, \$1,646,214.72. Average invoice value, 24.8 cents per yard. Difference, or under valuation in linens sent to the United States, 43 per cent.

**LINEN DAMASK AND DIAPER.**—Exported to all countries in one year, 1,397,077 yards; to the United States, 1,267,390 yards; other countries, 129,687 yards. Total declared value to the United States, \$413,311.80; to other countries, \$56,081.08. Average per yard to the United States, 32 cents; to other countries, 43 cents. Under valuation, 26 per cent.

The under valuation in the exports of carpets from the looms of Kidderminster, Halifax, etc., is enormous. In bags, leather, gloves, percussion caps, etc., the same ratio of under valuation is shown to exist, as in fact it does with all articles paying an *ad valorem* duty.

#### NOTE.

The true character of these statements by Gen. Butler, and that their main object was deception, were thoroughly exposed at the time by the *N. Y. World* and other leading journals. The following are illustrations of such exposures:

Let us examine Mr. Butler's figures. If 105,664,260 yards of stuffs sent by England to other countries besides the United States were valued at \$33,331,100.44, it would be interesting to know by which process of arithmetic he makes the average 39.7 cents per yard. For if anybody will take the trouble to multiply 105,664,260 yards by 39.7 cents the re-

sult of the operation will be \$41,948,711.22 or over \$8,600,000 more than Mr. Butler gives as the English return. Instead of being 39.7 cents the true average per yard is barely 31.64.

Butler goes on to say that the under valuation is 47 per cent., and that owing to this under valuation on this particular article the Treasury loses annually \$3,007,290.40.

But if all the stuff goods sent to the United States had been invoiced at the true average price of stuff goods sent elsewhere from England, that is, at 31.64 cents per yard, the total value of these goods would have been \$15,353,753.07, instead of \$10,324,741.24, as stated by Butler, making an under valuation of \$5,034,016.83. And as worsted stuff goods are subject to a specific duty of so much per pound, and in addition to an *ad valorem* duty

of 35 per cent., the loss to the Treasury on the \$5,034,016 at 35 per cent. is only \$1,761,905.60, instead of \$3,007,190.40, as estimated by Butler. It is hardly necessary to remind intelligent people that American importers are not necessarily guilty of fraud upon the revenue because the woollen stuffs which we purchase from England are cheaper than those purchased by other countries.

For the fact that they are imported under a lower valuation than those sent to other countries, however, we have only Butler's statement, and this may be accepted as about as accurate as is his calculation that an importation of 103,664,260 yards of stuff, costing in the aggregate \$33,331,100.44, costs 39.7 cents per yard.—*Review of Butler's speech, New York World.*

Discussing the same subject the *Boston Journal* also spoke as follows :

All will agree that the laws for the collection of customs should be simple and calculated to discourage fraud. But all good authorities declare that our laws are complicated, difficult to interpret or to apply, and directly calculated to invite fraud. Free Traders and Protectionists unite in preferring specific to *ad valorem* duties, because specific duties furnish no chance for the most dangerous of all frauds—that of under valuation. The necessity for any *ad valorem* duties is a misfortune, and they should be reduced at once to the lowest possible number.

But there is a class of duties imposed by our customs laws neither specific nor *ad valorem*—duties dependent upon value, but increasing at a jump, when a certain limit of value is reached. These are the duties that chiefly tempt importers to fraud, and that often make it impossible for merchants to calculate what duties they should pay, or to foresee whether an importation would be profitable or ruinous.

As an example the duty on "wools of the third class" is three cents per pound when the value is twelve cents or less, and the duty mounts to six cents when the value exceeds twelve cents. Thus it depends upon the fraction of a mill whether the importer shall pay three cents or six upon his wool; and this may make all the difference between gain and loss. In one heavy importation at this port the value of Coadova wool was found to be 11 cents. If it had been worth three tenths of a mill more the duty would have been increased three cents per pound, making a difference on this invoice of twelve thousand dollars in gold. We need not point

out the great temptation to under value such an invoice. This is not a solitary case, but one of a hundred, and in many cases, while Cordova wool was imported in hide packages, the rate of duty depended upon the question whether the weight of the package should be considered in estimating the value by the pound.

In the case of dry goods the complications are greater. For example, on women's and children's dress goods and on Italian cloths of wool, etc., worth twenty cents per square yard, the duty is six cents per square yard and thirty-five per cent. *ad valorem*; valued above twenty cents eight cents per square yard, and forty per cent. *ad valorem*, with a duty of fifty cents and thirty-five per cent. *ad valorem* on goods weighing four ounces and over per square yard, with ten per cent. of duty off by the last tariff.

In this class of cases the merchant frequently cannot tell what the duty will be when he orders the goods, nor when he receives them, nor when he enters them. Let us suppose that he has ordered an invoice of cloths, worth just twenty cents per yard—that is, just as good as can be imported under the low rate. A change in the atmosphere, shrinking the width of his cloths, while it does not affect their value as a whole, does affect their value per square yard, and transfers them from the "six thirty-five" schedule to the "eight forty" schedule. Again, an importer orders goods weighing a fraction less than four ounces—that is, just as substantial as they can be made without coming under the fifty cent. duty—but it is hard to shave so close, and a little additional wool woven

into his cloth, without adding appreciably to its value, changes the rate from eight cents per yard and forty per cent. *ad valorem* to fifty cents per pound and thirty-five per cent. *ad valorem*.

Here, again, the duty may depend upon the state of the atmosphere, and a few days of moist weather may ruinously affect the amount

of duties to be paid. These are not imaginary cases, but are of frequent occurrence under our tariff. They do not lead to forfeitures, nor expose importers to penalties, but they may make profits uncertain, and add fearfully to the risks of business. And we have only begun to state the perils that encompass the importer of dry goods.

And subsequently the *New York World*, returning to the subject of Butler's statements, further exposed his seemingly fair but really most partisan conduct, as follows :

General Butler, in his post-prandial speech in the House of Representatives, on the evening of June 19, after exhausting his carefully collected "facts," proceeded to make the following curt and unsupported charge against the importers of carpets :

"The under valuation in the exports of carpets from the looms of Kidderminster, Halifax, etc., is enormous."

This is equivalent to specifically charging with the practice of under valuation the great firms of A. T. Stewart & Co., Arnold & Constable, Chittenden, H. B. Clafin & Co., and two or three others who import ninety per cent. of all the foreign made carpets used in the United States. And even if Butler's speech had not already been shown to be as full of inaccuracies as post-prandial speeches are generally apt to be, most people would prefer to trust the honesty of these firms sooner than they would trust the veracity of Butler when the two were brought into conflict. But an inspection of the tariff on carpets, and of the Custom House records of carpets imported during the year 1873, will morally refute Butler's charge without further words. The duty on carpets is as follows :

"On Anbusson and Axminster carpets, 50 per cent. *ad valorem*; on Brussels carpets wrought by the Jacquard machine, 44c. per square yard, and 35 per cent. *ad valorem*; on Brussels carpets printed on the warp, 50c. per square yard; on Brussels tapestry, 28c. per square yard and 35 per cent. *ad valorem*."

Such is the complicated duty on carpets, invented by the pious Bigelow, the reputed inventor of the Jacquard machine. The average value of the several grades of carpets imported, and the valuation on which they actually paid duty for the year 1873, is as follows :

"220,012 yards Anbusson and Axminster carpets, average cost \$1.90 3-5 per yard; 292,700 yards Brussels carpets, wrought by the Jacquard machine, \$1.48 3-5 per yard; 789 yards Brussels carpets, printed on the warp, \$1.58, per yard; 2,598,480 yards Brussels tapestry, 90 cents per yard."

With these statistical facts before them,

persons tolerably familiar with the carpet trade will be able to determine whether Butler's allegation of enormous under valuations on importations of carpets has any foundation in fact. General Butler goes on to say :

"In bags, leather, gloves, percussion caps, etc., the same ratio of under valuation is shown to exist, as in fact it does with all articles paying an *ad valorem* duty."

In regard to one of the articles above enumerated by General Butler, viz., gloves, he seems to forget that he himself showed his clients Messrs. Goodsell, Baudillon & Co., of Boston, how to whip the under valuation devil around the Custom House stump. We gave eighteen months ago the history of these glove importations, but we feel called upon to repeat it for the especial benefit of Butler. The house of Goodsell, Baudillon & Co., in Boston, has a resident partner in Naples who manufactures the Joseph glove. These gloves are protected in the United States by a trade mark, and no other house except Goodsell, Baudillon & Co., of Boston, are allowed to import them. The Boston house has for years invoiced the Joseph glove at 15 lire for the one button and 19 lire for the two button gloves; while similar gloves, not as good, and not having the name of Joseph stamped in them, could not be bought in Naples for less than 19 to 20 lire for the one button, and 24 lire for the two button gloves. The Boston house soon gained the monopoly of common gloves in the American market, and kept it until they were brought up by the Boston appraiser, incited to the act, no doubt, by all other importers of gloves, who charged that Goodsell, Baudillon & Co. grossly under valued the Joseph glove. The accused firm shrewdly employed Butler himself to defend them, and Butler did it in a way that proved his cunning. He advised his clients to establish a market value for the Joseph glove in Naples, by duly advertising and holding a public sale. This the Naples house did in the following manner: They advertised a

large sale of the Joseph glove in the usual, regular way—but they added one *proviso*, which contained the sting of the transaction. It was “that these gloves can be shipped to and sold in every market in the world except in the United States of America where they are protected by the trade mark.” This was almost equivalent to offering a lot of American flags for sale, with the proviso that they can be used in any country and on any vessel except in the United States, or on an American vessel. The consequence was that the gloves were sold in Naples at the exact price at which the Boston house invoiced them, viz., 15 and 19 lire, respectively. And the merchants' appraisement in Boston up to 1872-73 gave it in favor of Butler's client. The *World* early in 1873 exposed this impudent piece of business, and called the atten-

tion of the two Boston Secretaries of the Treasury to it. Mr. Kerr, of Indiana, called for the papers, and the consequence was a new stoppage of invoices, a fresh merchants' appraisement, and a condemnation of Goodsell, Baudillon & Co. for under valuations. In this pickle the House is now soaking, nor is it likely that with Mr. Bristow at the head of the Treasury even Butler will be able to extricate them. Thus it appears that this virtuous upholder of the most stringent Custom House laws can find loopholes for under valuers if professionally employed by the right parties, and advise the most approved method for effecting successful under valuation. Verily Butler's record proves him as trustworthy when he pretends to watch the Custom House as did the nanny goat when set to watch a cabbage garden.—*N. Y. World*.

#### CONTINUATION OF GENERAL BUTLER'S REMARKS.

The Committee on Ways and Means may reply to this—which would be the fact—that they have not had these statistics before them. Certainly not. If they have, their report does not show it. They have examined only cases of individual merchants to find out if the laws have worked supposed hardships, and not the case of the people, to see how they are defrauded. The Committee put forward most prominently of all, as example of the hardship of the law upon honest men, the case of Phelps, Dodge & Co., making the case of that firm the groundwork for all their recommended legislation; and in their report, and in the debate which followed, and which for days members of the Committee had substantially to themselves, no one has uttered a word of animadversion upon Phelps, Dodge & Co. No harsh language is used—all that is reserved for the officer who brought their pleaded guilt to light. In the course of the evidence, as taken before the Committee, there seems to be a studied and careful attempt that that firm shall appear to the country as honest and injured merchants, who had, by the devices of the officers of the Government, been robbed of a very large sum of money. All the lawyers and chairmen of boards of trade, and there were many, made it the groundwork of their attacks upon the revenue laws. It went forth as the *cheval de bataille* of those who desired to take off all effective penalties to prevent frauds in the collection of the revenue.

The facts of this ease, as stated by Mr. Dodge, the senior partner, whose testimony as a witness occupied longer time than any other witness save one, and to make room for whom the representatives of the National Board of Trade gave way, are these: (Let us premise by saying, however, that none of the active junior partners of the house who swore to the invoices, and were charged with committing the frauds, were sent for by the Com-



mittee.) Phelps, Dodge & Co., a firm of many years' standing, who had imported between "three and four hundred million dollars' worth of goods, and had paid the United States Government more than fifty millions of duties" very honest—giving the very language of Mr. Dodge—"I will say it with perfect confidence, that our good name and our integrity were never assailed in these many years until it was assailed by the Government—meaning the charge, made by a special agent of the Treasury, of false valuation in December, 1872. Mr. Dodge again reiterates that statement: "The first knowledge or hint, in forty odd years of business that I have had with the Government, that I was accused of any dereliction of duty, was when sitting at the board of one of our large institutions I received a note from my partner, asking me to come to the Custom House (in December, 1872); that thereupon he went, and found his firm accused of having many invoices for five years—which was as far as the Government could go back on account of the statute of limitations—sworn to at a false valuation, for the purpose of defrauding the revenue; and that the books and papers of the firm touching those importations would be seized if not voluntarily produced to the officers. Thereupon, yielding to the necessity, his books and papers were produced, and from those books and papers the special agent of the Treasury made up an account, first of \$260,000, but afterwards coming up to the enormous sum of \$271,000, the amount of articles in the invoices in which "simple mistakes" only, as Mr. Dodge now declares, had been made in stating their value, by which the Government had lost duties to the amount of some sixteen hundred dollars only. But Phelps, Dodge & Co., fearing that these "simple mistakes" would hold them guilty in a court, and being "subject to a system of terrorism" which they could not withstand, in order to save themselves from the oppressions of the Government officials, in entire consciousness of integrity and innocence of all intended or actual wrong, after they had taken counsel of four most eminent lawyers, and after reflecting upon the subject for more than six weeks, made an offer of compromise of penalties for the crime of importation by false invoices, which they confessed in writing they had done, and paid this very great sum of money into the Treasury as penalty.

This is the statement, in brief, as Mr. Dodge puts it forward in connection with the record. He admits that the house of Phelps, Dodge & Co. has had, for many years, a branch house in Liverpool—Phelps, James & Co.—which was substantially the same in interest as the house in New York—composed of the same Phelps and the same James as the house in New York. To exclude all conclusion that this Mr. James of this firm in Liverpool did any wrong, Mr. Dodge tells us that Mr. James joined the firm and removed to Liverpool—



"Where, for over forty years, he has been the resident partner, sustaining the character of a high-minded, respected and honorable merchant, and for a number of years past the oldest American merchant in England; his name is a synonym of honesty and uprightness, and shedding a lustre on his own country and American merchants; gratified by the honors conferred abroad, but ever looking with pride, as an American citizen, for protection to his own country. In all this time not a question had ever arisen as to the vast shipments made to the house in New York. On entering his office one day in December, 1872, he found the following despatch, in leaded lines, in the newspapers:

'PHELPS, DODGE & CO., NEW YORK.—This great firm have had their books and papers seized by the United States for alleged frauds on the revenue to the amount of \$1,750,000.'

I will not attempt to describe the feelings of such a man. I will simply say the shock came well nigh killing him; nor has he ever entirely recovered. He felt that a life-long reputation, dearer to him than aught else, had been stricken down in a moment by his own Government, on which he had depended for protection. He had passed his three-score and ten until then with an unblemished character, and felt that, at least, he had a right to demand that the should be 'considered innocent till proved guilty.' Can a law liable to produce such results be just?"

If this account of Mr Dodge is in the main true; nay, if it is found to be true in any substantial portion; if his firm had maintained always a name for integrity and honesty of dealing with the Government; if his statement about Mr. James be true, that "in all this time not a question had ever arisen as to the vast shipments made to the house in New York," then I agree "that a law liable to produce such results not only is unjust" and should be repealed, but that it is the duty of the United States Government to condignly punish the officers who have done so gross a wrong to such honorable men, and not only to repay them the money that has been extorted from them, but to give them a very large sum as some slight reparation for the unqualified wrong and unheard-of injury without just cause committed upon them. But if all these are not true, in substance or in fact; if the whole story in all its essential parts is as false as the perjured invoices under which Phelps, Dodge & Co. pleaded guilty that they passed their goods without tax into the country, then the law that catches perjured scoundrels and smuggling villains and punishes them, however severely, ought to be sustained and made more stringent, not less.

The first statement of Mr. Dodge which challenges attention is whether the house in New York and Liverpool has, until the latter part of December, 1872, always borne this unblemished reputation without fault or blot, which he states; and have the dealings of that house with the Government been always just and true, as Christian "merchant princes" ought to have dealt with the Government? Because, if that be so, it can hardly be believed that for a comparatively small sum of money a house of such wealth and good repute has suddenly become so vile and so criminal as they confessed themselves to be in their letter to the Secretary of the Treasury

when they desired to "settle" with the Government for their crimes. If, on the other hand, it is found that this firm have been cheating this Government for long years, then we shall conclude that they have only been caught at their old tricks.

Now, Mr. Speaker, it is a notorious fact to everybody having to do with importations in New York officially for many years past, that the house of Phelps, Dodge & Co. have been confessed to be guilty of the most petty and outrageous smuggling, taking advantage of all technical points to get their goods in without paying duties that could be most ingeniously conceived.

A harsh accusation this, you say. Yes, and one that ought not to be made unless it can be made good. Well, then, sir, many years ago, since the forty years that Mr. James has been resident partner of the house in Liverpool and interested in the house in New York, during which Dodge says not a question has been raised as to the vast shipments of this house, and since Phelps, Dodge & Co. have been one of the largest importers in the country of lead, tin and other metals, the Congress of the United States passed a law to encourage American art, a law which in various phases you will find on your statute books as the tariff was revised from time to time, which was in effect that statuary of American artists should come in free. Whereupon this firm, of which Mr. James, this "honest, honored merchant," was resident partner and consignor, had hundreds and thousands of tons of lead and block tin and copper cast into statuettes of the Goddess of Liberty, and Washington, and Jefferson, and imported them into this country as works of American art, thereby escaping the duty. But when here they were taken from the hold of the vessel to the warehouse, and from the warehouse went to the melting pot, being sold to their customers for pig lead and tin.\*

Now, right here, I challenge any honest, just minded man to look me in the face and say that an "honest merchant" or a "Christian gentleman" ever did such a thing to cheat his Government, whether a James of Liverpool or a Dodge of New York. And yet this Dodge tells us that the "first knowledge or hint, in forty odd years of business that I have had with the Government, that I was accused of any dereliction of duty" was in December, 1872. Was that true? So far from its being true, Mr. Speaker, Congress had to change this very law about American statuary on account of these fraudulent importations and cheating of the revenue of which I have spoken by this very firm; and this firm was accused of this fraud upon the revenue on the 1st day of March, 1865, on this very floor. I send to the

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\* For demonstration of the malignity and entire falsity of this and subsequent charges preferred in this speech of Gen. Butler, against the firm of Phelps, Dodge & Co., attention is here asked to the card of the firm and other full and comprehensive statements presented hereafter in these pages.

Clerk to be read an extract from the *Congressional Globe* of that date, part two, second session Thirty-eighth Congress, page 1255. The fifth section of the tariff bill was under discussion, and was as follows:

*And be it further enacted,* That the term *statuary*, as used in the laws now in force imposing duties on foreign importations, shall be understood to include professional productions of a statuary or a sculptor only.

Mr. KERNAN.—I desire some explanation of this section. I should like to know what this unprofessional *statuary* is. Has this provision reference to those people who import leaden statues of Liberty, etc.?

Mr. MORRILL.—I may state, in brief, that it has been found that parties have in many cases evaded the payment of duties by importing articles in form of *statuary* when they could not legitimately rank as such. In some instances lead has been thus imported to a large extent. We had a law by which *statuary* was admitted free; and statues of the "Father of his Country" and of the "Author of the Declaration of Independence" were brought over in that way. I believe that the gentleman is answered.

Mr. ELDREDGE.—I would like to know from the gentleman from Vermont whether this does not refer to one particular firm. I want to know whether this does not refer to Phelps, Dodge & Co., and that firm alone?

Mr. STEVENS.—When *statuary* was admitted free we had statues of Webster and Clay and others in copper and lead imported, and as soon as they were landed and taken out of the Custom House they were melted down. IT WAS A FRAUD UPON THE REVENUE.

Mr. ELDREDGE.—What firm did that?

Mr. STEVENS.—Phelps, Dodge & Co.

Now, as Mr. Dodge himself came into Congress as a member of this House at the very next session, one would have supposed that he would have arisen to explain if this very grave charge upon the President of the Young Men's Christian Association was not true. So far the record. I am told, and I believe that there are men in this House who know the fact that Mr. Dodge himself admitted before the Committee on Ways and Means of a former House, when questioned, that these importations were made; the fact has never been denied, and can be easily substantiated. Imagine the fine feelings of this old Mr. James, the "honored merchant" of Liverpool, when he was loading up this fraudulent *statuary* to cheat the revenue of his country!

I have no doubt that it was quite true, as Dodge states, that when James heard that Phelps, Dodge & Co.'s books had been seized in New York in 1873, he nearly fell dead, or it almost killed him, for he knew how fraudulent their acts were and always had been, and feared the consequences. There was a merchant of high standing in Boston not many years ago who, when charged with frauds upon the revenue, made confession by committing suicide.

Importing of lead, and tin, and copper in the form of *statuary* was by no means the most serious attack of this firm upon the revenues of the Government for their own benefit. Cast your mind back, Mr. Speaker, to April,

1864, the very darkest hours of the war, when Grant was reorganizing the Army of the Potomac for his march on Richmond; when every patriotic man was preparing himself for the final great struggle; when the nation needed every dollar that it could command, and when it became necessary to add one half to our revenues by taxation to sustain our falling credit, with gold at 180. What shall we say of a firm which, in that trying hour of the nation's peril, exercised its infernal ingenuity in devising ways and means to defraud our impoverished Treasury of millions, and succeeded in so doing?

To meet the exigency we are obliged to pass a joint resolution providing that until the end of sixty days 50 per cent. of the rates of duties imposed by law should be added to the then present duties and imposts on all goods, wares and merchandise, so that we might have that time in which to adjust the tariffs; and then, just sixty days from that time, to wit, on the 30th of June, we passed an "An act to increase the duties on imports." It covered nearly all importations, and, among other things, it provided—

On tin plates, and iron galvanized or coated with any metal by electric batteries or otherwise,  $2\frac{1}{2}$  cents a pound.

At this time, if ever, Mr. Speaker, it became all patriotic men, all lovers of the country, to do everything that possibly could be done to aid the revenues of the country, to sustain its credit and enable the soldiers to receive their pay, and to support the armies in the field. Let us see, then, what the course of this firm of Christian merchants, Phelps, Dodge & Co., was in that crisis of their country's need. They were the largest importers of tin plates in the country, and that article is one of the largest of their importations. As we shall see in a moment, it ought to yield a large revenue. The duty upon it at that time was 25 per cent. *ad valorem*, which would be about  $1\frac{1}{4}$  cents per pound. It was the intention of Congress to increase it; therefore they enacted that "on tin plates, and iron galvanized or coated," etc., there should be a duty of  $2\frac{1}{2}$  cents a pound. But Mr. William E. Dodge went to the Treasury Department of the United States in his own person, as I have the means of showing, and there advocated a reading of that law which was sanctioned neither by the letter, text, spirit nor meaning, nor by the true and just thought of any patriot. He procured an opinion from the Treasury Department by which the comma was construed to be removed after the word "plates" and inserted after the word "iron," so as to make it read:

On tin plates and iron, galvanized or coated with any metal by electric batteries or otherwise,  $2\frac{1}{2}$  cents a pound.

So that, with that construction, the duty had not been raised on tin

plates at all, but only on "galvanized" tin plates. Who ever heard of a galvanized tin plate? None was ever imported, I venture to say, or ever will be. The consequence was, that all the tin plates imported into the United States, of which Phelps, Dodge & Co. were by far the largest importers, came in at 25 per cent. *ad valorem* instead of  $2\frac{1}{2}$  cents a pound, which was a very large increase of duty. I send a table to the Clerk to show how this would operate in favor of Phelps, Dodge & Co. I have not been able to obtain the statistics of their importations in 1864-'65, but I have their importations for 1870-'71, in which, taking the average both of weight and value, the following result is shown.

The Clerk read as follows:

*Imports of Tin Plates by Phelps, Dodge & Co. for the year 1870-'71.*

1870, (boxes).....	\$585, 378
1871, (boxes).....	734, 112
Total, (boxes).....	1, 319, 490
Average weight, (pounds), say.....	125
Total weight, (pounds).....	164, 936, 250
Duty, (cents).....	$2\frac{1}{2}$
Total duty.....	\$4, 123, 406 25

Total number of boxes, 1,319,490, at an average value of 22 shillings sterling per box, making £1,551,439; equal in United States gold to \$7,024,965; duty at 25 per cent., \$1,756,241.

RECAPITULATION.

Amount of duty at specific rate of $2\frac{1}{2}$ cents per pound.....	\$4,123,406
Amount of duty at <i>ad valorem</i> rate of 25 per cent. ....	1,756,241
Difference in favor of importer.....	\$2,367,165

Mr. BUTLER, of Massachusetts.—Showing, it seems to me clearly, even admitting that my average may be considerably out of the way, a difference of at least 100 per cent. in favor of the *ad valorem* rate.

Whether that average value is precisely correct or not is of no consequence, because it would not substantially vary the figures, and that shows that in 1870-'71, and every other year from 1864 until the change of the tariff on June 6, 1872, would make a difference in favor of Phelps, Dodge & Co. and against the United States, by this change of the law at the personal solicitation of William E. Dodge with the Treasury officers of the United States, of \$2,367,000, and over four millions annually, taking the whole importation of the United States during that eight years.

We have heard, in the matter of the duty on fruits, the earnest denunciation of the Committee on Ways and Means of the Treasury Department



for not paying attention to the position of a comma, by which \$300,000 were refunded; but the Committee on Ways and Means have told the House nothing of the effect in favor of Phelps, Dodge & Co., not solely of looking out for a comma, but the deliberate taking of a comma from one part of a law, where it had been placed by Congress, and putting it in another place where there was none, by which quite four millions of revenue were lost to the Government annually during a period of eight years, and that in favor of the fraudulent importer. In verification of this, I send to the clerk a letter of the Secretary of the Treasury of July 22, 1864, and I beg him to read the portion between the brackets.

The Clerk read as follows:

SIR: Your letter of the 12th instant is received, requesting to be instructed in writing in relation to the proper construction of the language of the second paragraph on the ninth page of the printed tariff of June 30, 1864, viz: "On tin plates, and iron galvanized or coated with any metal by electric batteries, or otherwise,  $2\frac{1}{2}$  cents per pound."

It would appear that an error of punctuation has been made by some one; most probably by the clerk who engrossed that part of the act. If the comma which is inserted after the word "plates" be omitted, and a comma placed after the word "iron," the true sense will be had, which unquestionably is that the tin plates, as well as the iron, must be galvanized or coated with any metal by electric batteries, or otherwise, in order to bring them within the provision.

Mr. BUTLER, of Massachusetts.—And that construction remains even unto this day; for we find in the authorized tariff of the Treasury Department, published after the act of June 6, 1872, which took off 10 per cent. from the duties, the following remarkable announcement:

Tin plates, galvanized or coated with any metal otherwise than by electric batteries,  $2\frac{1}{2}$  cents per pound. Ordinary tin plates, or tins other than the above, 15 per cent. *ad valorem*.

And yet, with this vast fraud upon the revenue by this firm staring them in the face, if they had chosen to examine it, the Committee on Ways and Means have recommended the diminution of duty on tin plates, upon the petition of Phelps, Dodge & Co., to one cent per pound, and passed the bill through under suspension of the rules.

Mr. DAWES.—No, sir; one cent and a quarter, against their protest.

Mr. BUTLER, of Massachusetts.—Ah! One cent and a quarter. Which was against their protest; the one cent or the quarter cent?

Mr. DAWES.—I gave you fair answer, sir.

Mr. BUTLER, of Massachusetts.—Certainly, sir. I suppose you would not give any other. What made you think you would?

Mr. DAWES.—You did not treat it fairly. Ordinarily such an answer would be fairly treated.

Mr. BUTLER, of Massachusetts. Wait a moment. I will read the memorial sent to Congress on this subject:

To the honorable Finance Committee of the Senate and House of Representatives of the United States.

Your memorialists—merchants, importers, dealers and workers of tin plates—respectfully request that you will consider the expediency and recommend to Congress the conversion of its present *ad valorem* duty on the import of tin plates into a corresponding and equivalent specific duty, as a measure calculated to simplify and increase the collection of customs revenue.

\* \* \* \* \*

The importations of tin plates during the last two fiscal years were in value as follows:

1872.—Amount in value imported.....	\$12,312,428
1873.—Amount in value imported.....	14,993,650

Total value..... \$27,306,078

That with an *ad valorem* duty of 15 per cent. the accruing revenue would have amounted on this importation to \$4,095,761.70.

But the actual weight imported during the above two years was:

	<i>Pounds.</i>
1872.—Gross weight, including boxes.....	209,671,640
1873.—Gross weight, including boxes.....	214,069,374

Total pounds..... 423,741,014

which import, at a specific duty of one cent per pound, gross weight (or including the weight of the packages), would have yielded a revenue of \$4,237,410.14. The difference in two years' revenue receipts, therefore, between the present *ad valorem* and the recommended specific rate of duty, would have been only \$141,648.44, or about \$70,000 per annum, and that \$70,000 in favor of the revenue.

Who do you suppose signed this memorial? The first signature is that of Phelps, Dodge & Co., of New York.

Mr. DAWES.—But you said that we passed through here a bill making the duty one cent a pound, on their petition. Now look at the bill, and it will show that the duty, as fixed by this House, was one cent and a quarter per pound, which is an increase over the present tariff; and that is their complaint, which they have carried to the other end of the Capitol.

Mr. BUTLER, of Massachusetts.—And have got it down there, I believe, to one and one tenth of a cent.

Mr. DAWES.—No matter what they have got it down to there. Your charge was against the present Committee on Ways and Means.

Mr. BUTLER, of Massachusetts.—They came here and asked for a duty of one cent per pound; and you put it upon tin plates, wooden boxes, iron packages, and all at one and a quarter. Is not that so?

Mr. DAWES.—And does not that make more for them to pay?

Mr. BUTLER, of Massachusetts.—Does it?

Mr. DAWES.—Does it not make more to put the duty on the boxes as well as the tin?

Mr. BUTLER, of Massachusetts.—No, sir. There is a specific duty now on the packages, which is not to be collected when you put on the duty by the pound. But, however that may be, one cent and a quarter per pound is not two cents and a half.

Mr. DAWES.—Your charge was against the Committee on Ways and Means. Will you please stick to that?

Mr. BUTLER, of Massachusetts.—No, sir; I have got through with them for the present.

Mr. DAWES.—Because you are answered.

Mr. BUTLER, of Massachusetts.—The facts before us are all before the country.

Mr. DAWES.—You ought to leave your statements as they are then.

Mr. BUTLER, of Massachusetts.—Now, having disposed of that difference of a quarter of a cent a pound between me and the learned Chairman of the Committee on Ways and Means (Mr. Dawes), I find I must hasten on.

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#### STATEMENTS OF GENERAL BUTLER REFUTED.

The utter and entire falsity of the above statements of Gen. Butler was, almost immediately after the publication of his speech, taken up and exposed by the *N. Y. World* in the following article, entitled

#### BUTLER'S ATTACK ON SECRETARY FESSENDEN.

The *Congressional Record* has reached us containing a *verbatim* report of General Butler's speech, although most of the members upon whom his lash fell, Roberts, Tremain and Foster, withhold their remarks for revision, doubtless in order to season them with *esprit d'escalier*, a sauce which Butler never serves himself up in.

There are several blunders in the speech which disgrace General Butler and discredit the House of Representatives, which among its 300 members supplied not one political economist capable of correcting him on the spot. One blunder was in stating the history of Lead Statuary, which he made a chief item in his indictment of Mr. James, of Liverpool, and Mr. William E. Dodge, of New York. The whole story of Lead Statuary, one of the most amusing chapters in economic history, was recited a few weeks ago for the readers of the *World* by David A. Wells, one of our foremost writers on this class of subjects. It confutes Butler at every point. The General is a subscriber to the *World* and ought to have neglected no such means of grace

and light. Says Mr. Wells, in our issue of May 11:

"The firm of Phelps, Dodge & Co. was not at the time of the occurrence of these events in existence; and the old firm that preceded them, namely that of Phelps & Peck, although large importers of metals, were not concerned in this matter of the leaden images."

The General might have been just as amusing over the stripped roofs of Old England, the musket bullets, the leaden weights, the deep sea sounding leads, and the clock weights, as he was over the bunged eye of the leaden goddess of liberty and the broken nose of General George Washington in Mr. Duncan's back yard, but he was "cursed with the curse of inaccuracy."

Another charge shows General Butler's gross ignorance of our tariff legislation, in a House of Representatives which contained not one member to correct him. It relates to the same firm, which is his *bete noir*, but bears hardest upon the late Secretary Fessenden, who is accused of a department decision which defrauded the country of more than \$32,000,000 duties. The charge we quote:

"The duty upon tin plates at that time was 25 per cent. *ad valorem*, which would be about 14

cents per pound. It was the intention of Congress to increase it; therefore they enacted that 'on tin plates and iron galvanized or coated,' &c., there should be a duty of 2½ cents a pound. But Mr. William E. Dodge went to the Treasury Department of the United States, in his own person, as I have the means of showing, and there advocated a reading of that law which was sanctioned neither by the letter, text, spirit, nor meaning, nor by the true and just thought of any patriot. He procured an opinion from the Treasury Department by which the comma was construed to be removed after the word 'plates' and inserted after the word 'iron,' so as to make it read:

"On tin plates and iron, galvanized or coated with any metal by electric batteries or otherwise, 2½ cents a pound."

So that, with that construction, the duty had not been raised on tin plates at all, but only on 'galvanized' tin plates. Who ever heard of a galvanized tin plate? None was ever imported, I venture to say, or ever will be. The consequence was that all the tin plates imported into the United States, of which Phelps, Dodge & Co. were by far the largest importers, came in at 25 per cent. *ad valorem* instead of 2½ cents a pound, which was a very large increase of duty.

\* \* \* \* \*

Whether that average value is precisely correct or not is of no consequence, because it would not substantially vary the figures, and that shows that in 1870-71, and every other year from 1864 until the change of the tariff on June 6, 1872, would make a difference in favor of Phelps, Dodge & Co. and against the United States, by this change of the law at the personal solicitation of William E. Dodge with the Treasury officers of the United States, of \$2,367,000, and over \$1,000,000 annually, taking the whole importation of the United States during that eight years."

General Butler's ignorance is monstrous and inexcusable. He is wrong at every point, yet might have corrected himself by looking in the *Congressional Globe*. Even if he knew nothing of the history of tariffs, he should have read the history of the act which he accuses Secretary Fessenden of misconstruing, and that would have opened his eyes. So small a precaution against inaccuracy this foremost Republican leader did not take.

In the first place his argument implies that on tin plates it was the purpose of Congress to more than double the duty by the Act of June 30, 1864. There is not the slightest foundation for such an assumption in the debates of the House or the Senate, and no such charge could have been dreamed of and proposed by the Ways and Means or Finance Committee without sharp debate in both houses. Was there nobody to tell Mr. Butler that, and to show him that twenty-two shillings for a box of 125 lbs. tin is a fraction over 4½ cents per pound first cost for tin plates, and that 2½ cents per lb. duty levied thereon, "in lieu of the duties heretofore imposed by law," if applied to tin plates, which,

in fact, are not mentioned in the Act, would therefore have been an increase from twenty-five per cent. duty to fifty-nine per cent. duty? But the absurdity of Congress increasing the duty on tin plates more than 100 per cent. at a sitting does not dawn on General Butler.

In the second place, whether tin plates are taxed twenty-five per cent. or fifty-nine per cent., or whether bunting is taxed thirty per cent. or one hundred and eight per cent., the consumer equally has to pay the duties. Of course less is consumed at a higher than a lower duty, and in this way does the importer find his account in the lower duty. In this very case had the duty on tin plates been raised suddenly from twenty-five per cent. to fifty-nine per cent., according to General Butler's own showing, a firm importing some 600,000 boxes of tin plates annually, and according to the rule of trade no doubt carrying over 150,000 boxes in stock, would on their stock have made fully \$300,000 in the difference of duties, in the same way in which the wine importers hoped to profit by the increase of duty on wine; and had Mr. Dodge solicited the Secretary of the Treasury to rule the 2½ cents duty instead of the twenty-five per cent., we should have been justified in suspecting Mr. Dodge of trying to benefit himself at the expense of the consumers of tin.

But, more conclusive still, the *Congressional Globe*, June 16, 1864, p. 3,011, shows that Secretary Fessenden's reading of the law was precisely the correct reading, sanctioned "by the letter, text, spirit and meaning," and what is more, that Senator Fessenden was at the time of the debates on the bill the Chairman of the Finance Committee of the Senate, and himself moved and carried the very amendment which he afterwards interpreted as Secretary of the Treasury in the sense that Mr. Butler finds not sanctioned by the "true and just thought of any patriot."

The clause as it came from the House read thus (as it may be reconstructed from the amendments following below):

"On galvanized tin plates, galvanized iron, or iron coated with any metal by electric batteries, 2½ cents per pound."

[From the *GLOBE*.]

"The next amendment of the Committee was in section three, line forty-nine, after the word 'on,' to strike out the word 'galvanized,' after the word 'plates' to strike out the words 'galvanized iron,' after the word 'iron' to insert the words 'galvanized or,' and in line fifty, after the word 'batteries' to insert 'or otherwise,' so that the clause will read:

"On tin plates, or iron galvanized or coated with any metal by electric batteries or otherwise, 2½ cents per pound."

The amendment was agreed to.



Mr. Fessenden—I will move to amend that clause further in the forty-ninth line, by striking out the word 'or' and inserting 'and;' so as to read 'tin plates and iron galvanized.'

The amendment was agreed to."

The *Globe* record thus shows that galvanized tin plates were alone referred to, and that although the comma after "plates" was by an error left in the first amended clause, as given in the record, and also in the law, the comma was omitted in Senator Fessenden's final amendment in the record, and nobody in the Senate or out of it ever thought of doubling the duty on tin plates, or doing anything but make galvanized tin and iron plates pay a duty of 2½ cents a pound. Secretary Fessenden was thus construing Senator Fessenden, and the record shows he construed him properly.

But the grossest blunder of Butler was when he asked: "Who ever heard of a galvanized tin plate? None was ever imported, I venture to say, or ever will be."

So that his argument was, that Secretary Fessenden, by transposing a comma, relieved tin plates of increased duty by inventing a class of an article unknown to our tariffs and non-existent. Had General Butler taken the pains to scan the tariffs imposed by the acts of Congress of March '61, August '61, December '61, July '62, March '63, all of which preceded the tariff into which he supposes Secretary Fessenden to have foisted a new item, he would have found "Tin, in plates or sheets," bearing a varying *ad valorem* duty highest at 25 per cent., and "Tin plates, galvanized or coated with any metal, a specific duty of 2 or 2½ cents a pound." Thus it is not Secretary Fessenden who was too compliant. It is General Butler who has blundered.

The history of the matter is this. At the

instance of the iron manufacturers a high duty was early placed on sheet iron and all like articles, galvanized sheet iron (iron coated with zinc by a chemical process) among the number. Several years ago an English firm importing galvanized iron, whose trade had been injured by the high duty, had a small amount of pig tin mixed with the zinc coating of their iron, and entered it at the Custom House as galvanized tin plates, claiming to pay only the lower duty on tin plates, instead of the higher duty on galvanized sheet iron. This evasion was resisted at the Custom House, and finally the contest resulted in the insertion of a definite clause in every subsequent tariff since 1861, and not merely now for the first time in the Act of June 30, 1864, making besides the regular item of tin plates a distinct duty on galvanized tin plates, the same as on galvanized iron plates. Even in the Act of March 3, 1857, tin plates are discriminated as "galvanized or ungalvanized," showing that the facts were then known to the Treasury Department. The distinction is preserved in 1861; section 19, tin plates, 10 per cent. *ad valorem*; section 7, on tin plates galvanized or galvanized iron, etc., 2 cents per pound. In the act of 1862, section 2 and section 8, preserves the same contrast. In the act of 1864, tin plates are not mentioned but the "tin plates galvanized or galvanized iron" clause got reconstructed, as shown above, into "On tin plates and iron, galvanized, etc.," where a misplaced comma elicited Secretary Fessenden's decision and General Butler's blunder. But the point is that not a member of the Forty-third Congress, many of them anxious to catch him tripping, not a member of the Committee on Ways and Means, knew enough to expose Butler's blunder on the spot.

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#### CONTINUATION OF GENERAL BUTLER'S REMARKS.

Such being the undeniable recorded facts in regard to Phelps, Dodge & Co., what was the special agent of the Treasury to believe when he found them charged with fraud, especially when false and double invoices were produced to him in December, 1872? Why, he could not but believe that these men were continuing to take all manner of unfair, fraudulent and swindling advantages of the Government, and doubtless he examined their books with that belief. And what did he find? He found that they had a corresponding house in Liverpool, and that that house was engaged in consigning invoices of tin plates to the house of Phelps, Dodge & Co. in this country daily, and sometimes three and four invoices per day; that in every



case those invoices were sworn to as a purchaser's invoice—that is, that the goods had been purchased in open market by the house of Phelps, James & Co., and that the prices annexed to the articles therein were the true and genuine prices paid for them. But he found that in the only kind of tin plates in which they could cheat—because the prices of the ordinary kind of tin plates were as staple as gold eagles would have been if imported by that firm—in every instance they had a double invoice from the manufacturer, and that those specially large sizes of tin were not purchased by Phelps, Dodge & Co. or Phelps, James & Co. in open market at all, but were manufactured for those firms, which are one and the same firm; and that in every instance, when they swore that they had bought these articles in open market, they swore falsely, and knew it, because they knew the article was manufactured to order for their firm, and they should have sworn to the cost price of the manufactured article, which he found each time had been in the possession of the firm before the oath was made, and it was a higher cost than the invoice price to which they made oath. So that they and those whom they employed had been guilty of deliberate and corrupt perjury every day in the year and every year of our Lord for the five during which the law allowed the officer to look back. And he found the evidence of that in this: That every one of these Custom House invoices, of which they had duplicates in the books of the firm, had a thin paper copy of the true manufacturer's cost pasted over it, in order that the firm might know how to sell at a proper price the goods which they had under valued so as to smuggle them by false invoices into the country.

Under these circumstances the special agent reported to the Secretary of the Treasury the facts. Mr. William E. Dodge employed four lawyers—Mr. Abram Wakeman, a former Surveyor of the Port of New York, and a learned lawyer in revenue law; Mr. Henry E. Knox, candidate for Supreme Judge of New York; Judge Fullerton, the foremost criminal lawyer in the City of New York, with a gentleman who had been an Attorney General of the United States, as consulting counsel; and those lawyers, after examining his case carefully for six weeks, advised him three times over to offer to pay the value of every falsified invoice article; which falsified invoice articles amounted to more than a quarter of a million of dollars—\$271,000—to get released from these frauds, and Mr. William E. Dodge and his partners, after full consultation, agreed to that proposition, nay, ardently desired it, and made a written statement to the Secretary of the Treasury that on account of “certain irregularities” which had been found in their business, they were willing to pay \$271,000 to compromise a suit which the district attorney in the mean time had, at their request, brought against them for a million dollars, or less than two thirds of the whole amount of their tainted

or fraudulent invoices. That suit was brought in that form at the request of the counsel of Dodge, after the compromise had been agreed upon, in order that when that compromise should be accepted it might cover every claim for penalties against Phelps, Dodge & Co.

When the letter offering to pay that great sum came to the Secretary of the Treasury, George S. Boutwell, he wrote back in substance—all of which will be found in the testimony—"I cannot accept this compromise. I will not be put in the position which that offer will put me, of being a black mailer. Either you have committed fraud or you have not committed fraud. If you have not committed fraud, you should not pay the Government anything. I will consider the question of compromise, but I cannot compromise under your statement that you are guilty of irregularities only." Thereupon that offer was modified by Phelps, Dodge & Co., after consultation with their four eminent counsel, who advised their client to plead guilty to a suit charging them with importing goods to a million dollars in value by false invoices and fraudulent appliances; and thereupon Phelps, Dodge & Co. sent an offer of compromise, admitting their guilt individually and collectively, and renewing their offer to pay the \$271,000; and while the Secretary of the Treasury was considering it they withdrew the offer.

Meantime the matter had got into the newspapers; the Christian Association, of which Mr. William E. Dodge was a burning and a shining light, began to inquire, What manner of man is this, who makes long sermons by day and prayers by night in the temples while his partners in business are accumulating his profits by daily and hourly perjuries and frauds upon the Government? And William E. Dodge wrote, as the testimony shows, to George S. Boutwell, and said to him in substance, "I withdraw my offer of compromise." He expected the Secretary to reply to that, "I cannot permit the withdrawal, as the matter is closed." Then Dodge would doubtless have gone away and said, "The compromise was inadvertently made, and when I went to withdraw it the Secretary took a snap judgment upon me." But the Secretary, with his usual straightforwardness, wrote in substance: "Very well; if you think you are not guilty withdraw your compromise and go to a jury." So the compromise was withdrawn. Thereupon Dodge consults again with his four lawyers, and after nearly two weeks' delay he renews the offer and the money is paid. In order to break his fall he says to the Secretary, "The Government officers think that I ought not to withdraw the compromise; they having once accepted it I am bound to carry it out." What was the manly, and honorable, and straightforward answer to that of the Secretary of the Treasury? It was, "Mr. Dodge, if your action in renewing the proposition has been influenced by this representation, you will have an opportunity to consider the subject

anew and take such course as you may think proper before final action by this department." Finding no subterfuge would avail, Mr. William E. Dodge, with his four lawyers behind him, after weeks of such consultation and such shifts and such attempts at evasion as I have described, deliberately put on file a written statement admitting that his firm were guilty of the charges in suit; that by these false and fraudulent invoices the revenue had been defrauded; and paid \$271,000 in expiation of that guilt.

The SPEAKER.—The hour of the gentleman has expired.

Mr. BECK.—There are a number of gentlemen who want to speak; I am pretty early on the list myself. I am perfectly willing that half of my time should be taken by the gentleman from Massachusetts (Mr. Butler).

Mr. ELLIS H. ROBERTS.—I want to have it understood whether this argument is to be all on one side, and all to be made by the gentleman from Massachusetts.

Mr. BUTLER, of Massachusetts.—It is a great deal like the argument of the Committee a few days ago; they had two days.

Mr. ELLIS H. ROBERTS.—The gentleman from Massachusetts had been three times invited to be present and take part in the discussion. All I desire to know is whether or not other gentlemen are to succeed the gentleman from Massachusetts, or will members of the Committee on Ways and Means have an opportunity to be heard?

Cries of "Go on—go on!"

Mr. BUTLER, of Massachusetts.—I am in the hands of the House.

Mr. ELLIS H. ROBERTS.—I do not object to the gentleman's going on, but desire to have it understood that there are two gentlemen other than members of the Committee on Ways and Means who are to speak after the gentleman from Massachusetts gets through, and before any member of the Committee on Ways and Means can be heard.

Mr. BUTLER, of Massachusetts.—I do not care who speaks after me.

Mr. FOSTER.—We want this matter understood. If those two gentlemen who have the floor after the gentleman from Massachusetts gets through are to speak an hour each, that will make a great difference.

Mr. BUTLER, of Massachusetts.—I do not know how long they will speak, but if you will allow me to go on we are wasting good time here.

The SPEAKER.—The gentleman from Massachusetts is not entitled to the floor any longer, except by some arrangement that may be made. The rules of the House are specific that no gentleman shall speak more than one hour.

Mr. FOSTER.—Who will follow the gentleman from Massachusetts?

The SPEAKER.—There has been a list made out—

Mr. COBB, of Kansas.—I move to suspend the rules, in order that the time of the gentleman from Massachusetts may be extended.

The SPEAKER.—The gentleman has not the floor for that purpose.

Mr. FOSTER.—I want to have this thing understood.

Mr. BUTLER, of Massachusetts.—I want it understood, too.

Mr. FOSTER.—I do not object—

Mr. BUTLER, of Massachusetts.—Why do not you keep quiet, then?

The SPEAKER.—The Chair thinks that it would be only the ordinary fairness of debate that members of the Committee on Ways and Means should have the right to follow the gentleman from Massachusetts.

Mr. BUTLER, of Massachusetts.—I have no objection to that; I only wish they would not interrupt me now.

Mr. MAYNARD.—I would ask the gentleman from Massachusetts how much more time he wants?

Mr. BUTLER, of Massachusetts.—Not much more, but I do not want to feel cramped for time.

Mr. MAYNARD.—Then I move to suspend the rules, so that the gentleman from Massachusetts may have another hour.

The motion to suspend the rules was seconded, and (two thirds voting in favor thereof) the rules were suspended.

[The announcement of the result was greeted by applause on the floor and in the gallery.]

The SPEAKER.—It is a gross infraction of the rules of the House and of decency for the galleries to manifest approbation or disapprobation of any action of members of this House, and the Chair will put in active effect his power to clear the galleries if this is repeated. The slightest manifestation of applause or disapprobation will cause the galleries to be cleared.

Mr. BUTLER, of Massachusetts.—Phelps, Dodge & Co. paid the \$271,000 in expiation of that guilt, and yet we are told "all merchants are honest," and Phelps, Dodge & Co. are the very princes of merchants. Nay, Mr. William E. Dodge claims he comes here before your Committee, as I understand, as President of the Chamber of Commerce of the City of New York, as the exemplar of the merchant, as a dealer in hardware, ties up his goods and puts a specimen pair of shears on the outside, so that we may know the quality of the cutting instrument inside without opening the package.

Gen. Butler then took up the subject and defended at length the "Sanborn contracts" and the Treasury. What the character of the defence was, and also the general bearing of the speaker, may be inferred from the following further extracts from his remarks:

The Committee on Ways and Means have spent several months and a large amount of money in seeming examination of the question of the pro-

piety of the law, and if that time and money were spent in good faith to ascertain whether the law of May 8, 1872, giving the moiety contracts to those who should collect old debts ought to be repealed, it may have been well spent. If, on the contrary, this apparent purpose of investigation has only been to cloak another and a different one, carried on for political and personal purposes only, then the Committee and the House may find that they have been made in this matter simply instruments to pander to the rivalries, hates and ambitions of politicians, instead of carrying on a great work of necessary legislation.

I have some evidence showing that the whole Sanborn contract investigation was gotten up not exactly for those objects and those designs which wise legislators and grave statesmen would willingly avow.

The first the country heard anything about these Sanborn contracts was that Mr. Sanborn was being indicted in Brooklyn by the district attorney of that district, one Tenney, about the 1st of February last. As soon as that was done and duly trumpeted in the opposition newspapers, Mr. Tenney, an officeholder under a republican administration, and claiming to be a republican himself, sent his assistant district attorney here to one of the Committee on Ways and Means, a leading democratic member of the House, to have him bring the Sanborn contract matter "to the front," Tenney having furnished him with the Brooklyn democratic papers, which gave flaming and laudatory accounts of Mr. Tenney's able endeavors, as they termed it, to ferret out a great fraud on the Government. One item of evidence that I have of this fact is a letter of direction to his assistant, written by Tenney to his assistant, which I send to the Clerk to be read.

The Clerk then read as follows :

LAW OFFICES OF TENNEY & HOLT, }  
178 Broadway, New York, *February 6, 1874.* }

FRIEND HUGHES.—Do not fail to see Hon. James B. Beck. He is a democratic member from Kentucky. He is member also of the Committee on Ways and Means. I have to-day sent him *Union* and *Eagle*. He is a powerful member of the democratic party, and will *bring this Sanborn matter to the front*. I think no news specially.

Yours, &c.,

TENNEY.

Mr. BUTLER, of Massachusetts—Now, if republican officeholders will put ammunition into the hands of democratic members on the Committee on Ways and Means with which to attack and break down the republican administration, far be it from me to say one word in animadversion upon



the conduct of that democratic member of the House who should make the best use he can of that information for that object.

But what shall we say of a republican majority of a Committee on Ways and Means who shall allow themselves to be made the tools of an opposition member, to find him ammunition with which to wound, if not kill their own administration, if the only inducement to what they did was being blindly led by the superior wiliness of their democratic associate? But was that the mainspring of action on the part of all the republican members of the Committee? Fourteen days after, to wit, the 20th of February, a letter was sent by the gentleman from Ohio, who reported the abrogation of the Sanborn contracts from the Committee on Ways and Means, to Supervisor Harmon, of Brooklyn, New York, the substance of which was sent to me under the heading "Copy of a letter picked up in the streets of Brooklyn, New York," which is as follows:

"As a member of the Committee on Ways and Means he (Foster) had discovered the existence of the Sanborn contracts. At the same time he learned that indictments had been found in Brooklyn; that he prepared and offered the resolution calling on the Secretary for information; that he offered the resolution and General Butler objected to it. After this Butler came to him and asked him to offer the resolution again before the following Monday, expecting Butler to make a speech on it. In the meanwhile he (Foster) and General Woodford had agreed to reply to such speech if made and attack Butler; but General Butler withdrew his objection and said he hoped the House would pass the resolution, which surprised him and Woodford, especially himself, *'as he had prepared himself to rap old Cock-eye.'*"

Here you have the substance of a genuine letter, which the gentleman from Ohio will not deny, especially the last phrase, because I told him one day that whatever he might say of me behind my back I wished he would not write of me that way, and I do not believe he will again.

Now, what could the gentleman from Ohio desire to "rap old cock-eye" for? What had he done to the gentleman from Ohio? Had he ever interfered with him? Had he ever said an unkind word to him, or of or concerning him? I aver, from an intimate knowledge of that unfortunate individual with the defect in his eye, so delicately alluded to, that he had never entertained for that gentleman any but the kindest feeling. What personal grief he had, alas! I know not. From the time I got that letter I was utterly puzzled to know my imputed offence; but I got certain information, Mr. Speaker, afterward, embodied in the sworn testimony voluntarily sent me by the affiant, which the Clerk will read.

The Clerk read as follows:

CITY OF WASHINGTON, *District of Columbia.*

WARWICK MARTIN, of the City of New York, being first duly sworn, on oath deposes and says:

Being acquainted with some of the claims embraced in the so-called Sanborn contracts, I, after the investigation commenced in the Committee on Ways and Means, addressed Hon. Henry L. Dawes and Hon. Fernando Wood, of said Committee, requesting to be summoned to testify in said case. I was not summoned; but having business in Washington, I came here on the 9th of April, 1874, and concluded to appear before said Committee and testify, if permitted so to do. I stopped at the Ebbitt House, and there saw Mr. Dawes, and informed him of my wish to appear before the Committee. He said I should be permitted to so testify. Afterward, on the same day, at the committee room, Mr. Dawes notified me to be present in said room on the following morning at ten o'clock. I was in said room promptly at the time named. On my arrival at said room only one gentlemen of the Committee was present, whom I learned to be Hon. Charles Foster. Another gentleman whom I did not know, but who I supposed was a member of the Committee, came into said room soon after my arrival, and he and Mr. Foster commenced conversation.

Mr. Foster said to him, in language which I distinctly heard, that the object with which he commenced this investigation, or one object, was to find something against Ben. Butler; that said Butler had written a letter to his district to defeat his election, and he wished to get even with him, or words to that effect.

On the following day, the 11th of April, Mr. Foster came up and spoke to me at the Ebbitt House, where we were both stopping. He and I had a short conversation, during which the name of General Butler was mentioned, I having, as I now remember, stated that the committee seemed to be investigating General Butler instead of the law of May 8, 1872, and the contracts thereunder. Mr. Foster stated in reply, "Damn Butler; he ought to be investigated; all the men connected with these contracts are Butler's friends, and you are his friend also, and saw him last night, and told him what I said in the committee room yesterday about him," or words to this effect. I then stated to Mr. Foster that he was mistaken; that I had never enjoyed the pleasure of an introduction to, or an acquaintance with General Butler; that I had not seen him on the evening named, or at any other time, to converse with him. *I add that this is true still.* I have never been unfriendly to General Butler, but have admired him for many things, and especially for the fact that he has always been in favor of compelling wealthy men, capitalists and corporations, to pay what they owe the Government, instead of taxing the poor, the industrious, and the honest farmers, mechanics and laboring men to make good the deficiencies of the rich.

I so stated to Mr. Foster, and added that I thought this one question was all there was in the so-called Sanborn case.

WARWICK MARTIN.

Sworn to and subscribed before me this 20th day of May, A. D. 1874,

[SEAL.]

H. W. BRELSFORD,

*Notary Public, District of Columbia.*

Mr. FOSTER.—In so far as that affidavit makes the charge that I wanted to investigate General Butler, I pronounce it here now an unequivocal falsehood. The party who makes it I know is perfectly characterless, and the gentleman from Massachusetts ought to know that too. He is the man, as the gentleman from Massachusetts knows, who attempted to black mail his friend Sanborn out of several thousand dollars.

Gen. BUTLER.—I could not believe even the affidavit until I turned to this very voluminous report, containing, with the testimony, three hundred and twenty-two pages, and upon examination found no allusion whatever to my humble self or eyes in the report of the committee upon the Sanborn contracts, by any designation whatever; so that I am sure it turned out that I had nothing to do with them whatever, because the gentleman from Ohio in the examination of witnesses alluded to me in various forms of questions thirty-three times, and each time he got the answer that the witness did not know that I did anything, or knew anything, or said anything on the subject of the Sanborn contracts. Still, every time he alluded to me the New York *Tribune* published a statement that General Butler's name appeared everywhere in the investigation; and this statement was copied each day into all the Boston papers which are under the control of some of my colleagues from Massachusetts, who were endeavoring to convince the people that I was engaged in the affair. Nay, my colleagues' newspapers were so put to it for evidence of the fact that they declared that Sanborn's lawyer, Mr. Prescott, was my private secretary and henchman, whatever that may be, and cited as proof that he had his office with me, when I am told that he once had an office in a four story building where I have mine, with some twenty other tenants. Let me say that I never saw Prescott three times in my life, and did not know him by sight till he was sent for as a witness. Besides that, when the gentleman made his speech he alluded to me twenty-eight times, making sixty-one in all; and then, after his sixty-one questions and personal allusions in the examination and in the speech, the editor of the *Tribune* thought that my "coat tails" could be seen in the affair. And this is the kind of attack to which men in public life are exposed from investigations when somebody wants to get even with them.

Now, I have no objection to being investigated by anybody and everybody, friends or enemies—for the more the latter investigate me the worse they will like me—but I do object to the public money being spent for that purpose under the direction of the Committee on Ways and Means, when they ought to have been perfecting a finance measure, so that the two thirds republican majority of this House should not now hang their heads with shame that this Congress has to go home, after more than six months' session, and no comprehensive financial or revenue measure perfected and passed, or any ever come from that committee on which the House may pass; but, on the contrary, they have been engaged in vilifying the administration, rapping "old Cock-eye," and getting even with him, even to examining into his private affairs, the fees he received from private persons, and his personal acts to the number of thirty-three

questions. And thus having learned how unjust and improper it is for anybody even, anywhere, to examine into another's private affairs, the committee reported a bill that a man's books and papers ought not to be used or his private affairs inquired into without an order of a court upon a complaint under oath.

Is it wonderful that the interests of the republican party and the interests of the country have been neglected while the Committee on Ways and Means, under the leadership of the gentleman from Kentucky, endeavors to break down the administration, as he had a right to do, and under the lead of the gentleman from Ohio, mistakenly thinking he had a private grievance against me to assuage, have frittered the time of Congress away for more than six months in striking at one of their fellow members who had not injured them, and against whom, although pursued with the hate of hell, they found nothing and reported nothing after six months of investigation. No, thank God; as usual, "old Cock-eye" escaped without a rap.

Now I call upon the gentleman from Ohio to deny, if he can, that more than one of my colleagues have been to him to give him information about me, and to have questions put about me, and to advise with him as to the course that might be taken in his Committee to investigate me. Sir, was that so or not? Will the gentleman answer upon his honor?

MR. FOSTER.—Do you wish an answer now?

MR. BUTLER, of Massachusetts.—Yes, sir.

MR. FOSTER.—I have to say that I have had no conversation with any gentleman from Massachusetts in relation to the Sanborn investigation; none of them have aided or advised me in any way in the prosecution of this investigation.

MR. BUTLER, of Massachusetts.—I am glad to hear of it.

MR. FOSTER.—Or in the investigation of the matter at all.

MR. BUTLER, of Massachusetts.—Only about other things?

MR. FOSTER.—No; about nothing else.

MR. BUTLER, of Massachusetts.—Whenever I want a witness to tell me what is not true I shall not send for my friend from Ohio.

MR. FOSTER.—What do you mean by that?

MR. BUTLER, of Massachusetts.—I mean that you tell the truth exactly.

Does the House wonder now that almost the only man who was found to object to my addressing the House at this hour was one of my colleagues from Massachusetts?

MR. SPEAKER, this business of investigation is carried too far. I can speak plainly in the face of the country; for myself I defy investigation. For

fourteen years, since the commencement of my public life, I have lived under the focus of a microscope, magnifying and distorting every action of mine a million times, except, perchance, it was a good one, which it blurred and covered altogether. Living under such inspection, therefore, whether I would or no, I must lead an honest and upright life, or some man would in all these years have got a "rap at old Cock-eye," and I propose to take very good care of him now and ever. I desire investigation. I look forward to the time when the majority of this House will be opposed in politics to mine, and then I ask them to investigate every act of mine and publish its results to the country. I invoke the investigation of a gentlemanly political opposition, and not of a malignant personal spleen and spite, egged on by political rivalry; because I humbly trust that when my every act is known and understood authoritatively, and exactly in its breadth and in its motives, the kindly judgment of my countrymen will be, after all rivalry and unkindness of thought has passed away, "He was a man whose virtues overbalanced his faults, who loved his country, his kind, justice and nobleness."

Mr. FOSTER.—Let us pray.

Mr. BUTLER, of Massachusetts.—Yes, but spell it with an "e."

#### SPEECH OF HON. ELLIS H. ROBERTS.

Mr. Ellis H. Roberts then took the floor and spoke as follows:

Mr. Speaker, after laws are passed it is not usual to discuss them. It has remained for the gentleman from Massachusetts (Mr. Butler) to wait until both Houses of Congress have acted upon the bill which he assails to come in and make his argument against it. It is not because he was not invited that he did not appear upon the discussion of the moiety bill; it was not because he did not have the opportunity to appear that he did not discuss the Sanborn contracts, when the bill in relation to those contracts was pending in the House. It fell to me to have charge of the bill to amend the customs laws and to repeal moieties, and three times, Mr. Speaker, as you personally know, the consideration of that bill was postponed to enable the gentleman from Massachusetts to appear and be heard upon it. He states that it was understood by the country that he was ill when the bill was passed. The anteroom at my back resounded with the stories that he was telling and the arguments that he was making there against the bill; not here before Congress, not here before the country, but back there in the cloak room he choose to come and make his arguments. Sir, I do not object to his arguments now or at any time, here or elsewhere.



He chose to refer to the British revenue system. He tells you that we referred in our discussion to the British revenue system as justifying the bill which Congress passed with entire unanimity in this House, and with but three dissenting votes in the other House, and upon the conference report without one dissenting voice in either House.

But the British system, Mr. Speaker, is not our only authority, and yet we might rely upon it. The gentleman chose to say that our tariff was complex. It is; but our internal revenue system is complex now, and was much more complex when Congress, with great unanimity, repealed the moiety system with reference to the internal revenue. Our internal revenue system justifies the Act of Congress as British experience justifies the policy which we have adopted.

But the gentleman from Massachusetts tells you that the moiety system has been sustained by every administration since the foundation of the Government. It is true that it is an old system. In olden times it was customary to hang a man who stole a sheep. It was not found by experience that that was a wise provision of law, nor has it been found wise to maintain a like barbarism upon our statute books in any regard.

But the gentleman from Massachusetts comes here to teach us that we should have a specific and not an *ad valorem* tariff. Perhaps that is so. But that is not the question before us to-night; and it was not the question pending before this House when the bills were passed which he now assails. The gentleman tells us that under this *ad valorem* system we collect but 67 per cent. of the duties, not without the moieties but with the moieties, not without this machinery of barbarism but with this machinery of barbarism. With your inducements to officers to suffer violations of the law to go on for years, to mass large penalties for division; with your arbitrary invasion of the office and correspondence; with your severities arraying public sentiment against you, so that juries refuse to be the instruments of your laws; with commerce protesting against your statutes and their enforcement, it is not strange that we can collect but 67 per cent. of our duties.

If we cannot do any better than that with this system of barbarism, I ask my colleagues about me if it is not high time to try some better system? We mean to collect more than 67 per cent. That is why we have asked Congress to reform the revenue laws; that is why you have abolished moieties—why you have adjusted the use of books and papers as evidence to the rule of every one of our States and to the practice of our fathers; that is why you strike down the extreme measures adopted during the war; that is why you appeal to the mercantile community to assist in sustaining just laws. You have made no mistake in so doing. And even the gentleman from Massachusetts did not appear to obstruct your beneficent action.

But he does come here to tell us something about the case of Phelps, Dodge & Co. Mr. Speaker, we are not trying the case of Phelps, Dodge & Co. If we were, then the remarkable qualities of the gentleman from Massachusetts as a criminal lawyer might well be brought into play, and counsel ought also to be present on the other side. We are here to consider legislation, not to assaillcitizens who are reputable—who were reputable before the gentleman from Massachusetts came into the Congress of the United States, and who will be reputable after the gentleman from Massachusetts leaves this body.

Mr. BUTLER, of Massachusetts.—To what citizens do you refer?

Mr. ELLIS H. ROBERTS.—I refer to the house of Phelps, Dodge & Co.

Mr. BUTLER, of Massachusetts.—O, yes; that is all right.

Mr. ELLIS H. ROBERTS.—And I refer to the gentleman from Massachusetts.

Mr. BUTLER, of Massachusetts.—I heard that.

Mr. ELLIS H. ROBERTS.—And I ask, because I do not know so much as the gentleman from Massachusetts about the case of Phelps, Dodge & Co.—

Mr. BUTLER, of Massachusetts.—That is evident.

Mr. ELLIS H. ROBERTS.—I do not know so much as the gentleman from Massachusetts of one side of that case. To show why he is better informed about it than I can be, I ask that the evidence of the informer with reference to the connection of the gentleman from Massachusetts with the case of Phelps, Dodge & Co. may be read.

Mr. BUTLER, of Massachusetts.—I am much obliged to you for that.

Mr. ELLIS H. ROBERTS.—It will be found on page 173 of the evidence.

Mr. BUTLER, of Massachusetts.—Will you allow me to reply after it is read?

Mr. ELLIS H. ROBERTS.—No, sir.

Mr. BUTLER, of Massachusetts.—I thought so.

Mr. ELLIS H. ROBERTS.—You declined to let me come in.

Mr. BUTLER, of Massachusetts.—Never.

Mr. ELLIS H. ROBERTS.—You have had your day in court.

Mr. BUTLER, of Massachusetts.—I only declined to have you interrupt me, not to have you come in and reply.

The Clerk read as follows:

Mr. FOSTER.—I did not exactly understand the answer to Mr. Roberts' question. You employed counsel for what?

Mr. JAYNE.—I deemed that it was a case where some ugly points might arise, and where this matter might come up; that it probably would come up in the course of some discussion growing out of this case. I did consent and urge settlement of this case for a sum of money that the counsel for the informer was not willing should be accepted. I deemed that some ugly proceedings might, perhaps, grow out of this attempt to black mail. I thought the truth might come out and I might need counsel. I came with the facts to the Secretary of the Treasury and to counsel whom I employed.

Mr. FOSTER.—Then I am to understand that you employed counsel to prevent a larger sum being paid by Phelps, Dodge & Co.?

Mr. JAYNE.—I employed counsel to secure the settlement upon the terms that they offered and seemed anxious to close upon.

Mr. FOSTER.—And not to have them pay a larger sum?

Mr. JAYNE.—Not to have them pay a larger sum.

Mr. FOSTER.—I think it would be well for you to give the name of the counsel, for we have understood that he was employed for a different purpose.

Mr. JAYNE.—General Butler was the gentleman, sir. He was not employed for a different purpose.

Mr. FOSTER.—Has he been employed in any other cases with you?

Mr. JAYNE.—Whenever I had questions of law that I did not understand—and in the course of my experience I have had a great many questions of law and of evidence arising—I have submitted a number of questions to General Butler, and I have paid him, I think, \$1,500 besides what I paid in that case.

Mr. FOSTER.—How many cases has he been employed in?

Mr. JAYNE.—I could not tell the exact number that I have asked him questions with regard to. I should think two or three, or three or four, perhaps.

Mr. ELLIS H. ROBERTS.—That is all I ask to have read at this time. That will show why the gentleman from Massachusetts knows more about that case, or may claim to know more about one side of it than I do. Perhaps it is a part of the task which he has undertaken, for the fee mentioned in that evidence, to assail a reputable mercantile house upon the floor of the American Congress.

Mr. BUTLER, of Massachusetts.—Will the gentleman allow me——

Mr. ELLIS H. ROBERTS.—The floor is mine, Mr. Speaker.

Mr. BUTLER, of Massachusetts.—You are as brave as a country editor generally is.

Mr. ELLIS H. ROBERTS.—Brave! I have asked you three times to come into this House and debate this question, and you had not the courage to come.

Mr. BUTLER, of Massachusetts.—Not when I was sick.

Mr. ELLIS H. ROBERTS.—The floor is mine, Mr. Speaker.

Mr. BUTLER, of Massachusetts.—You asked a sick man to come; you are very brave. He is well now, and you will not hear him.

Mr. ELLIS H. ROBERTS:

“I did hear him groan:

Ay, and that tongue of his, \* \* \*

\* \* \* \* \*

Alas! it cried, ‘Give me some drink, Titinius,’

As a sick girl.”

Mr. BUTLER, of Massachusetts.—Yes, I am like Cæsar.

Mr. ELLIS H. ROBERTS.—Yes: “As a sick girl.”

## SEIZURE OF BOOKS AND PAPERS.

Let me call particular attention to the very significant fact that even the gentleman from Massachusetts has not one word to say in favor of the system of the seizure of books and papers. You have substantially wiped it out. That is one of the chief features of the bill which you have passed. Against that reform criticism is dumb.

The gentleman from Massachusetts contents himself with warning us against the consequences of the repeal of moiety. When was it ever discovered that exactly one half was the proper sum with which to induce lawyers and others to steal papers, or to have them "picked up on the street," to bribe clerks of merchant houses, and to surround the commerce of this country with an infamous band? Why is it just one half? Why not a little more than one half, so that larger fees could be paid for counsel to appear not only at the Treasury but upon the floor of this House? Why not more than one half? Why not a little less?

You, my colleagues, have chosen to say that for smuggling you will pay one half for the detection of the crime; but for other offences against the revenue you will pay—how much? A bagatelle, is it? For the detection of any offence against the revenue committed by importers or by officers of the revenue you will pay as much as you pay for a year's work, not simply to the Chairman of the Committee on Ways and Means, with his experience of eighteen years in this House, his ability, and industry and fidelity; but you will pay for the detection of every crime against the revenue, as much even as the American people pay to their Chairman of the Committee on the Judiciary of this House. Is not that quite enough—a year's salary of the best talent in the country employed in the cares and responsibility of legislation for any detective who will bring to light one single offence against the revenue? The price of a farm, of a homestead, to a detective for a single case—is not that enough? Do you want to keep up a system for pouring money into States to control gubernatorial nominations? Even with all that flood of money gubernatorial nominations are not always secured.

But the gentleman from Massachusetts appeals to the country against Congress as if we had repealed fines, penalties and forfeitures. The gentleman from Massachusetts could not have intended to create that impression, because it is not true. You have not repealed fines, penalties and forfeitures. We have sought to make them more definite; we have sought to make collection dependent, not upon informers, not even upon the pleasure of the Secretary of the Treasury, or any district attorney. But we have sought to make your law clear, and to render its execution certain as the fiat of fate.

But, Mr. Speaker, it is a work of supererogation to talk here in favor of a bill which received the unanimous vote in this House from every State; which in the other branch of Congress had but three negative votes, and finally, upon the conference report, was unanimously adopted.

Mr. DAWES.—After full discussion.

Mr. ELLIS H. ROBERTS.—Yes. After long and full discussion in the other House, and after a discussion in this House which was exhaustive in every respect except in not having represented in it the honorable gentleman from Massachusetts.

Mr. Speaker, I have it in my heart and bones that the republican party is the party of conscience, the party of progress, and the party of right, and it is because I so believe that I have been a republican before the gentleman from Massachusetts was a republican, and I expect to be a republican after the gentleman from the Essex district of Massachusetts has made new party affiliations and gone to his own place.

It is because the moiety bill adjusts the revenue law to what I believe to be the modern ideas of humanity not only, but what seems to me to be the essential spirit of civilization, that in my humble way I have done what in me lay for the repeal of the system, and in doing that I have rendered the best service in my power to the republican administration, to the republican party, to honesty in legislation and administration, and therefore to my country and my God.

#### SPEECH OF HON. CHAS. FOSTER, OF OHIO.

Mr. Foster, who followed Mr. Roberts, said:

Mr. Speaker, after listening to the extraordinary speech just made by the gentleman from Massachusetts (Mr. Butler), I find but little in it that calls upon me for a reply, save and except his personal allusions to me in connection with the Sanborn investigation, and I desire to say that so far as my personal action in these proceedings is concerned, it was solely in the line of discharging an official duty, and with no feeling of unkindness toward any one. I believed from the start that a monstrous robbery had been attempted and partly executed on the Treasury. I believed then, as I do now, that the law authorizing the Sanborn contracts was passed for plunder by those who engineered its passage. I believed that more than one member of Congress had knowledge of the purposes for which it was to be used before it passed. If, therefore, in asking general questions about members of Congress in connection with these contracts, the answers to which should point in all manner of ways to the gentleman from Massachusetts (Mr. Butler), it is not my fault. If he has had no connection with



them, it is certainly unfortunate for him that so many of his friends should be mixed up with them.

I well knew that I would have to encounter such hostility as only the gentleman from Massachusetts can command. I knew that my letters, if possible, would be stolen; I knew that unprincipled men would be induced to make false affidavits; I knew that my past life would be investigated with the purpose to "break me down;" but I did not expect that the secret service of the Government would be used to traverse my district trying to hunt up something for the gentleman to use against me. He has through the agency of one Hughes secured a copy of a letter of mine, which he has just read to the House, the contents of which he is welcome to. Let him make the best use he may of the phrase "old Cock-eye;" it is a generous, well intended phrase, will wear well, and live as long as the gentleman from Massachusetts. He has come forward with an affidavit from a black mailer of Sanborn, known to him as such, in which the false statement is made that I said to this man Martin, "D—n Butler; he ought to be investigated." He has acknowledged that he has sent into my district to learn of something that he might use against me. His strikers have given out that I was to be *scalped*. Now, what does all this amount to? There is nothing in the letter of which any friend of mine need take exception, except to smile at its truthfulness. There is nothing in the affidavit (if true) that reflects any discredit on me; and so little could his detectives find in my district, that he has not been able to come forward with any charge whatever.

On the other hand, Mr. Speaker, the investigation has been a complete success, a vindication of my labors on the sub committee, and of the work of the whole committee in the results they have reached; for the House have unanimously adopted the bills and reports. The law under which the Sanborn contracts were made is repealed, the contracts annulled, the officers of the Treasury Department directly and indirectly connected with this disgraceful transaction are removed, and are replaced by men in whom the country has the fullest confidence.

That I have led in an investigation that has resulted so successfully in every phase of the case is a matter in which I feel a just pride, and is one which I know the country appreciates. That the gentleman from Massachusetts has suffered in reputation is not my fault, but rather that of his associations. I am not surprised that he should feel so sore over it and that he has seen fit to make a personal attack upon me to-night. He has made his own bed of torture; let him lie in it. I cannot help it.

I am very glad, Mr. Speaker, of the opportunity of presenting to the House and to the country the facts in relation to that investigation. The

gentleman from Kentucky (Mr. Beck) and myself were appointed a sub-committee on the part of the Committee on Ways and Means to investigate the affairs of the Internal Revenue Office, at the request of the Committee on Appropriations. During that investigation it came to our knowledge that the Treasury of the United States was being robbed in some way, just exactly how we did not know. I went alone to the officers of the Treasury Department, because the gentleman from Kentucky (Mr. Beck) said to me that I had better go myself—that as he was a democrat it would be better for me to know the secrets of these things alone. I went to the office of the Solicitor of the Treasury, and also to the office of the Secretary of the Treasury, and my interview with those officers was so unsatisfactory that I came back to the House and offered a resolution of inquiry calling for copies of the contracts. After two or three weeks' delay that resolution was answered, giving copies of the contracts, but without the names of parties charged with having withheld their taxes. That answer was unsatisfactory to the House, and the gentleman from Pennsylvania (Mr. Randall) offered a resolution broader in its terms, which was referred to the Committee on Ways and Means. The Committee on Ways and Means directed me to report back to the House that resolution in still broader terms, calling for copies of the contracts and orders and everything in relation to the Sanborn contracts. In the course of time, in two or three weeks, perhaps, we got an answer to this resolution. Then in two or three weeks the Secretary's answer came to the House and was ordered to be printed, and when printed the document came to the Committee on Ways and Means, and on examination the Committee directed me to report a bill to the House to repeal the law.

Now, Mr. Speaker, but for the written request of Sanborn asking to be heard before we acted, and the personal application of the gentleman from Massachusetts (Mr. Butler) that Sanborn's request be granted, that law would have been repealed and no investigation would have been instituted. About that time Mr. Sumner died, and this matter was postponed until the ceremonies attending his funeral were over. Sanborn appeared directly afterward with a host of witnesses, half a dozen or more. He brought Mr. Coughlin from New York, he brought Mr. Simmons from Boston, he brought old Belsterling from Philadelphia, and others—some from Washington and other points. They came on here, and were going to convince (as the gentleman from Massachusetts said) the Committee on Ways and Means that we were all wrong, and that the law ought not to be repealed; but by the time we got through with them we found the whole transaction reeking and stinking with corruption all over—so much so indeed, that Sanborn himself, at the instigation I presume of the gentleman from Massachusetts (Mr. Butler), refused to testify.

Mr. BUTLER, of Massachusetts.—Why do you presume that?

Mr. FOSTER.—Because he said he had a letter from a member of Congress asking him not to testify.

Mr. BUTLER, of Massachusetts.—From me he did not.

Mr. FOSTER.—He said that he had got a letter from a member of Congress advising him not to testify.

Mr. BUTLER, of Massachusetts.—His counsel?

Mr. FOSTER.—There is nothing but coat-tails about that.

Mr. BUTLER, of Massachusetts.—Did you not say in your letter that you were going to give "a rap at old Cock-eye?"

Mr. FOSTER.—Yes, I did; and I wish to ask the gentleman from Massachusetts if I did not get in "a rap at old Cock-eye" on a former occasion and after the letter was written, say about the 10th of March?

Mr. BUTLER, of Massachusetts.—No; not once; not even his coat tails. You have just said you never got nearer than his coat-tails.

Mr. FOSTER.—The gentleman was fairly knocked down one day here. But no more about that, however; let me go on with my story.

Mr. BUTLER, of Massachusetts.—O, yes.

Mr. FOSTER.—Sanborn himself refused to testify. The Committee on Ways and Means found out by those witnesses brought here by Sanborn himself, without any expense to the Government, that he was robbing the Treasury as well as debauching certain internal revenue officers from New York and New England; that they were simply collecting money that the officers of the Government could collect themselves without any intervention of Mr. Sanborn. We discovered, and you will find it in this report, that he collected several thousand dollars from one of these railroads six months before he had a contract to collect at all; that he collected several thousand dollars, some ten or twelve thousand dollars, without any contract whatever, and many other transactions equally scandalous.

Mr. Speaker, we followed this matter up, and I never asked a question which led to a sight of the gentlemen's coat-tails, as you will see if you will look through that book of testimony, but what was general in its character. I never asked a question directly about the gentleman from Massachusetts (Mr. Butler); I asked about some member of Congress. We found Prescott, No. 12 Pemberton Square. *I do not suppose the gentleman knows him*, but he has an office in the same building. *I do not suppose the gentleman from Massachusetts knew anything about Prescott offering \$5,000 to one of the Brooklyn papers to take Sanborn's side of this question. I do not suppose he knew anything about paying money to the man Hughes, who stole my letter to aid in securing Sanborn's acquittal in the United States Court at Brooklyn. I do not suppose he knows anything about these people*, as well as almost

every other man engaged in this infamous transaction. But the facts are that in one way or another they all had some sort of a connection with him. *My letter was stolen*, not picked up in the street as the gentleman says, *and given to the gentleman from Massachusetts*. I expected my letters would be stolen when I got into this controversy with the gentleman, and I was careful about what I wrote. There is nothing in any letter I have written which calls for explanation. And further, Mr. Speaker, this House, for the protection of its members, had to pass a resolution to keep the gentleman from Massachusetts from stealing telegrams.

Now, Mr. Speaker, I have but little more to say about this matter. This investigation was brought on by the friends of, and by the gentleman from Massachusetts himself. No other person was to blame. They brought it on, and out of the mouths of their own witnesses this testimony came. We forced it, it is true. We forced Mr. Sanborn to testify. We discovered these frauds which are fully set forth in our report, and which have not been, and cannot be answered by the gentleman from Massachusetts to-night. The bill repealing the law was passed by a unanimous vote of this House, the gentleman himself being present.

MR. NIBLACK—I desire to call the attention of the gentleman from Ohio, before he concludes, to the manner in which Mr. Sanborn procured information from Europe in regard to income taxes and other claims for taxes.

MR. FOSTER—What is the gentleman's point?

MR. NIBLACK.—I desire to call the attention of the gentleman from Ohio to the manner in which Mr. Sanborn procured information from Europe as to certain taxes that the gentleman from Massachusetts (Mr. Butler) claimed that Mr. Sanborn had information of, which he proposed to collect if allowed to do so. I desire also to call his attention to the manner in which Mr. Sanborn got information as to certain whiskey taxes, also as to certain railroads.

MR. FOSTER.—We have gone over all these things, Mr. Speaker, in our report and in our speeches. But it may be well on this occasion to call the attention of the House and the country to them again.

Now, this railroad case was a marvellous thing. Sanborn made marvellous use of railroad guides; that oath of his is complimented by the gentleman to-night. The acquaintance of Mr. Sanborn with the gentleman from Massachusetts is long lived. It dates away back to old Fortress Monroe times. This man Sanborn was engaged in business with Mr. Hildreth (I do not care to tell here the relationship between Hildreth and the gentleman) down in the neighborhood of Fortress Monroe, selling goods to the rebels. Hildreth and Sanborn made a good deal of money at that time. I am told that Sanborn was employed as agent of the Adams Express Com-

pany South and played rebel. The company wanted a go-between who would get through the command at Fortress Monroe, where the gentleman from Massachusetts then commanded, and Mr. Sanborn was employed. What we were told as to that is not published, and I will not further allude to it.

I do not think it worth while, Mr. Speaker, to detain the House at any greater length on the matter of the Sanborn contracts, and I would not have said a word on this subject but for the personal attack the gentleman from Massachusetts has made upon me.

Mr. BUTLER, of Massachusetts.—I have made no attack upon you.

Mr. FOSTER.—I do know from reputable sources that men have been in my district—under whose auspices I do not know—looking into the matter of my election and trying to find out something about me, for what purpose I am not advised. But I am advised, and I will state it to the House, though the authority may not be very good, that the secret service fund has been used to send men to my district—I mean the secret service in charge of Colonel Whiteley, another one of the gentleman's friends—to look for a fifty cent counterfeit plate. That was the ostensible purpose of his visit to my district. The real purpose was to hunt up something for the gentleman from Massachusetts (Mr. Butler) to use against me.

*I do not suppose the gentleman from Massachusetts knows anything about it. I do not suppose he knows about anybody being sent there.* Still they have been there, and were sent by his friends. But, Mr. Speaker, it seemed to me, under this provocation, that I had a right to say "old Cock-eye" just once in a letter to a friend.

Mr. BUTLER, of Massachusetts.—That is your stock in trade.

Mr. FOSTER.—It is a good stock, is it not?

Mr. BUTLER, of Massachusetts.—It is all you have got.

Mr. FOSTER.—I do not know that I shall say anything further. I only rose to give a history of the connection of the Ways and Means Committee with the Sanborn case, and to repel the gentleman's attack. But I do want to make a further remark, and that is about the case of Phelps, Dodge & Co. A more unprovoked, unwarranted, outrageous assault upon reputable gentlemen I have never heard of, and I believe was never heard by the House or the country before. What Phelps, Dodge & Co. may have done forty years ago I do not know. I am assured that that statutory business occurred before either of the gentlemen now composing this firm were partners in the house. What Phelps, Dodge & Co. did then I know not. But assuming that what has been said about these things is true, it has nothing to do with this case of last year. What is that case? Why, Mr. Speaker, Phelps, Dodge & Co. in the course of five years imported \$40,000,-



000 worth, or thereabouts, of tin. They paid \$5,000,000 of duty, and in that time they over valued their goods some \$300,000. The total loss to the Government charged against them as accruing to the revenue of the country is \$1,640. Did they intend to defraud the Government, or was it an error?

Now, Mr. Speaker, when we look at such cases as this we ought to take into account the surroundings. Is there any man living who supposes that Phelps, Dodge & Co. would rob the country of \$1,640?

Mr. BUTLER, of Massachusetts.—No.

Mr. FOSTER.—That is all that is charged against them. Does any man believe that they would rob the country of that sum?

Mr. BUTLER, of Massachusetts.—No.

Mr. FOSTER.—That was the aggregate for five years, giving an average of about \$300 a year. We must judge a case of this kind by its surroundings. If a mendicant or ordinary vagabond should obtain \$1,000 that he could not account for, we would call him a thief. But when you take into account the standing of Phelps, Dodge & Co. and their vast business, we must admit that they were simply errors; and if errors amounting to \$300 a year should creep into a business of \$8,000,000 a year, is this the great outrage, is this the great wrong to the Government that the gentleman argues should ruin forever the integrity of a leading firm like Messrs. Phelps, Dodge & Co.?

Mr. Speaker, I say shame on the Government, and shame on the men in Congress or out of it, who plead for such so-called justice or equity as against such an honorable firm.

Now, Mr. Speaker, if I should invite the gentleman from Massachusetts to my house to dine, and the next day should find a spoon of mine in his pocket, nobody would believe that he had stolen it, but if found in the pockets of a vagabond we would know that he was the thief.

The trouble is, Mr. Speaker, the gentleman from Massachusetts (Mr. Butler) has in his pockets a large fee paid to him out of this robbery as counsel for Jayne, and it is getting too hot to hold it there comfortably. This accounts for the writhings, and contortions, and abuse of the name of Christian by the gentleman to-night.

Mr. Speaker, I give it as my deliberate opinion, and the country believe, and I believe, and the Committee on Ways and Means unanimously believe, this Congress believe that Phelps, Dodge & Co. were deliberately robbed; and I believe, furthermore, that the country never will do justice by them until they pay them back the money thus extorted from them. Without attempting to elaborate the question, that is my deliberate and honest conviction of that case.

Mr. BUTLER, of Massachusetts.—Then why not bring in a bill to repay them?

Mr. FOSTER.—The time has not come for that yet. I have now said all I desire to say upon this subject.

### SPEECH OF HON. HENRY L. DAWES.

Mr. Speaker, I began this investigation in reference to the effect of giving half of the proceeds of uncollected taxes and one half of the fines and penalties to men who would turn their backs upon other employments at fixed salaries to engage in this pursuit. I followed it up as well as I could in the last Congress. And upon the very second day of this session, through the aid of this House, I called upon the Treasury Department to disclose what my colleague (Mr. Butler) has shown here to-night to be the effect on honest men of this system, which has been enforced in this country for the last fifty years, upon the collection of the revenue; an effect which, I agree with him, has been continually growing worse and worse, until with him I believe that under all the force and effect of this system of moieties there has come into the Treasury of this kind of taxes but about two thirds. Was it not time, then, was it not a matter that commended itself to the Committee on Ways and Means, to look about and see whether there could not be some improvement upon a system of collecting and enforcing revenues which my colleague describes in this way: that the less honesty a man has who is engaged in enforcing the revenue laws the better; that efficiency, according to his idea, and success, according to his idea, are incompatible with honesty in the public service; and therefore you must have agreed to the old adage, "thieves against thieves and rogues to hunt rogues?"

Sir, it did occur to me as a member of the Committee on Ways and Means, and I accordingly set on foot the investigation which resulted in a unanimous vote of this House that that system shall continue no longer; it did occur to me that better than imposing new taxes would be an improvement in the system by which the other third of those taxes already imposed should flow into the treasury of the United States, rather than into the pockets of those men of whom my colleague says that the chief commendation they have for their services is that they have no honesty to embarrass or blunt them in their ways and means of detecting rogues. Sir, no effort of my colleague or any other gentleman on this side of the House will enable him or them to enforce upon the republican party as a part of its creed or policy any such doctrine as that. Honesty and efficiency in the public service, properly rewarded by fixed and fair salaries and

compensation, I put against my colleague's policy and scheme, coming down though it may from the years that are passed, bringing down though it does no other fruit than inordinate fortunes in the pockets of informers and prosecutors, while the deficiencies in the collection of the revenue go on increasing year after year until the startling announcement is made upon this floor, by the chief apostle and defender of it all, that the result and fruit of it is that under this great system not more than two thirds can be got into the Treasury ! Sir, some other purpose, some other method, some other idea worthy of effort on our part should stimulate us to action and investigation, if the fruit of it all is going to be such a sorry and sad picture as that which my colleague himself spreads out here as the fruit of the system.

Sir, it was in this manner that these investigations originated in the Committee on Ways and Means. My colleague had much to say about the petty pursuits of the Committee on Ways and Means.

He has criticised and complained of the action of the Committee on Ways and Means in pursuing this investigation, and has spread before the House his troubles with one or two members of the committee, and has sought to impugn the motives of the Committee on Ways and Means in their recommendation to this House and in their action, which commanded the unanimous vote of the House. I participate in none of that controversy.

Having approached this matter long before my colleague came into it, I have pursued the even tenor of my way as Chairman of the Committee, directing as well as I could the examination, for the purpose of demonstrating what was wrung from the very officials in the administration of public affairs here at Washington with a view to the repeal of that system. Even the last Secretary of the Treasury, when before the Committee on Ways and Means, declared it his conviction that this system ought to be abandoned. Even Jayne declared before the committee that the system was unwise, and that it ought not to be continued. No man, no official, has appeared before the committee or has made any communication to the House who has not sustained this view. The late Secretary of the Treasury (Mr. Boutwell) not only voted to repeal all of these laws, but he declared in his place in the Senate but a few days ago that this same Mr. William E. Dodge, who was put in the front here by my colleague, was an honest man.

Sir, how much coöperation in this work of investigation have we received at the hands of my colleague ? Although he had notice from the committee whenever any testimony was introduced there with which his name was connected, he failed to present himself there to be heard

upon this question, as he has failed up to this hour to give the House the benefit of his views upon it. He has no cause of complaint against the Committee on Ways and Means for the manner in which they have pursued this investigation, so far as he is personally concerned. He had personal notice every time any testimony appeared before that committee touching him, so that he might have the opportunity to appear there. No man has cause to complain of the action of the committee. We invited the men who were receiving these moieties to appear; we invited the officials in New York, and Boston, and Philadelphia, who were receiving these moieties; but they could not find time or opportunity to appear here and give us the benefit of their counsel. And yet, Mr. Speaker, I saw them around the galleries of this House and at the other end of the Capitol when the question was pending whether these moieties should be cut off entirely. I saw them in the lobbies at this and the other end of the Capitol. There was opportunity and time enough for them to come to Washington to give the aid of their advice to legislators by their votes upon that measure of repeal, but up to this hour the Committee on Ways and Means, so far as they are concerned and so far as my colleague is concerned, have been compelled to grope in the dark, and gather up by the best means they could the information upon this subject which could be wrung from unwilling witnesses.

Sir, whatever others may say of the effect upon the party, and the damage to the republican party that a republican Committee on Ways and Means has inflicted by these proceedings, I have this to say, that although I have served on many committees in Congress, on none of them do I look back to the work accomplished with more pride and satisfaction than upon the work that has been accomplished by the present Committee on Ways and Means, by which they have wiped out of the statute book forever that blemish upon the administration which hitherto has prevailed; a provision that in order to have an efficient prosecutor you must have a dishonest man, and that in order that your officers shall pursue with energy the calling of enforcing the revenue, they must be stimulated by one half of all the fruits they can gather from infractions on it.

Sir, I wish to detain the House no longer with comments upon this work of the Committee on Ways and Means. I have no personal controversy, as I have said, with my colleague. There is nothing that has transpired in that committee, over which by your appointment, sir, I have sat as chairman during this investigation, of which any gentleman in this House has any just cause to complain. The committee have submitted to this House and to the other the results of their work. The unanimous approval of both branches of Congress is sufficient for them. If I wanted any other

proof of the force and power of the public commendation of this act, I would point to the effort of my colleague here to-night to baffle this current and to struggle against this condemnation of a system which I am sorry to see he has espoused, and which he feels bound to defend.

### SPEECH OF HON. LYMAN TREMAIN, OF NEW YORK.

Mr. Tremain next obtained the floor, and addressed the House as follows :

Mr. Speaker, understanding that there is no other member of the Committee on Ways and Means who desires to address the House to-night, it seems to me that I cannot, consistently with the duty I owe to an honored firm of constituents, permit this House to adjourn without raising my voice to repel the most extraordinary and unjustifiable aspersions that have been uttered here to-night upon the floor of the American Congress. Phelps, Dodge & Co. are my constituents. For a quarter of a century that firm has occupied a position at the head of the mercantile community of the great commercial emporium, with no stigma or stain resting upon their honor or upon their good name.

To-night the gentleman from Massachusetts (Mr. Butler) has constituted himself their accuser, has appeared as witness against them, and has acted as their judge. No charges are served upon that firm to appear in this hall; no counsel has a right to appear here to defend them. Slanders are uttered here for which a man would be held personally responsible before the tribunals of his country if uttered where he would be deprived of the immunity that shields him here. He is here protected by the broad ægis of the Constitution, which declares that no man shall be held responsible for words uttered in debate upon the floor of this House.

And yet what have we heard here to-night? For the purpose of defending two dead and buried institutions, and in pronouncing an anathema upon the action of the Committee on Ways and Means of this House for their action in condemning and hurling into that infamy from which no power on earth can lift them—the rotten Jayne moiety system, and the infernal Sanborn contract—the gentleman from Massachusetts has held up the firm of Phelps, Dodge & Co. as swindling merchants, as perjured villains, as men who have been engaged for years in attempting to defraud the revenues of this Government, and as men who ought to be held up before this crowded audience, upon an accusation which shall go upon the wings of the lightning from one end to the other of this Republic, as men who have cheated the community in which they live, in obtaining that reputation and that honor which, forsooth, are to be destroyed before the



keener criticisms, the sharper instincts, and the wiser sagacity of the hero of the Sanborn contract and the Jayne moiety system.

No man can deny the power of the gentleman from Essex. But he has not the power to raise the dead ; and until he has that power he can never reverse the judgment of this House and of this country that the Sanborn contract and the manner of its performance constitute the most disgraceful and disgusting performance that has ever brought discredit upon the American name. With all his power to please, and to call down the plaudits of the galleries, the gentleman from Massachusetts can never roll back the popular tide or reverse that judgment which is the judgment of the American people, that the scenes which have transpired in New York, of which Phelps, Dodge & Co. were the victims, are as deserving of the condemnation of an honest and a justice loving community as were the diabolical transactions of the inquisition and of the star chamber.

Sir, there is in all this broad land but one man who has the boldness to stand up against the judgment of an honest people, against the unanimous expression of this House, against the conscience and the honest opinions of a thoughtful and a truth loving community in regard to these transactions. The time for making the defence was when the gentleman from Massachusetts was invited and he did not come. He was sick ! He will be sicker yet before he gets through with his connection with the Sanborn and the Jayne infamies. No man is able to stand up before the American people and sustain these atrocious proceedings.

The gentleman has said that Phelps, Dodge & Co. were guilty of frauds in regard to statuary. Sir, a falser accusation was never made. I know well the history of that stale slander, which has been picked up from the gutters and peddled in your cloak room. It is false in every part of it.

Let me say, in the first place, that in the firm of Phelps, Dodge & Co. the name of Phelps is retained although the man who bore it has been dead for many years. Under a statute of New York the name of a deceased member of a firm and of the old firm itself may, under certain conditions, be continued by those who succeed to the business. Of course it would never be continued except where it has acquired credit and standing by probity and integrity, and is a name that ought to be perpetuated.

Sir, it was nearly fifty years ago that an Act of Congress was passed increasing the duty upon lead in pigs and bars from one to three cents per pound. What was the occasion of the increase ? Lead mines had been discovered at Galena, Illinois, and according to the system of that day, of protecting American productions and American industry, this duty was increased 200 per cent. There had before that time grown up in the cities of Baltimore, Philadelphia, New York and Boston large manufactur-

ing establishments, concerned in the manufacture of white lead, in one of which the old firm of Phelps & Peck (the name of the dead Phelps being perpetuated in the firm) were interested. When that statute was passed, somewhere from 1820 to 1824—I do not remember the exact year—these large establishments found that their business was failing; and they looked around to see in what manner they could reimburse themselves for the losses they sustained by reason of the legislation of Congress. They found that this statute, which was under the old system of duties, had left upon old lead, so called, an *ad valorem* duty of 15 per cent.

I never heard that there was anything wrong in acting precisely according to law. These manufacturing establishments consequently concluded to import old lead. I will show you by and by that, as to the statutory story, even the firm of Phelps & Peck had no more connection with it than the gentleman from Essex. There was a great demand for old lead. The consequence was that in the old establishments in England the roofs that were made of old lead were taken off, new lead put on, and the old lead imported to this country. Merchants and the officers of the customs submitted the question to the Treasury Department, where it was decided, properly and legally, that no more than 15 per cent. could be collected on old lead under the statute, although that lead was afterward used for the ordinary purposes for which pig lead and bar lead would be used.

Congress, when the next session came, proceeded to cure that omission in the old law. They did so. Then these gentlemen looked around, and they found that there was still another provision in the tariff laws under which musket balls and bullets were admitted at a duty of 15 per cent. *ad valorem*. There was then a wonderful demand for bullets and musket balls, old and new. They were brought over in immense numbers. Again the revenue officers submitted the question to the Government, and the Treasury officials decided that the importation of bullets and balls at 15 per cent. *ad valorem* was according to law; that the Government could not help itself. At the next session another law was passed patching up that hole in the tariff. But afterward it was discovered that there was still another item left with a duty of only 15 per cent. *ad valorem*—and that was leaden weights and leads used by sailors. There was then a wonderful demand all at once for weights and leads. The old weights were found to be very defective. Every shipper and every sailor wanted a new set of leads. A large number were imported. In the meantime a suit was brought in New York by Mr. Price, the district attorney, but he was ignominiously beaten; for the Judge, upon the first hearing of the case, dismissed the complaint on the part of the Government. Then this defect in the law was supplied. But there was still left the old statute

which said that statuary and busts should be admitted either free of duty or at a small duty. Well, there never was such a demand for busts since the time when my colleague (Mr. Cox) got his bust made when he and I were in Florence. Why, sir, they had statues of all the great men of ancient and modern times. They had Moses and Aaron, and Benjamin and Joshua, and Cæsar and Napoleon, and Wellington and Washington, and Jefferson, and everybody else, run into statues on the other side. Some of them came over, to be sure, as has been said, with an eye knocked out, or a nose battered, or fingers dislocated; still you could recognize them. They came in great quantities. A suit was undertaken to be brought in New York; but Mr. Price had had sufficient experience in that line, and he thought he would not venture upon the experiment. They went up to Boston and they sued an honorable old merchant, who was one of these white lead manufacturers, for importing these leaden statues which, according to the language of the gentleman from Massachusetts, were transferred to the melting pots. They brought suit against him. What did the old merchant do? His name I do not remember—perhaps some one from Massachusetts here will.

A MEMBER.—His name was Leavitt.

Mr. TREMAIN.—Yes; I think his name was Leavitt. What did he do? No doubt if the lawyer from Essex had been there he would have run for his office if the Government officer had not got there ahead of him. As he was not there they had to take a man of less importance, and they employed a man you may have heard of by the name of Daniel Webster. Mr. Webster went into court to defend his old friend, an old Boston merchant. They proved he imported these old leaden statues, and they probably could have satisfied the jury, if that had been material, that he meant to melt them as soon as he had got them into his store. What did Mr. Webster do? Mr. Webster said to the Judge, "I ask you to instruct the jury that the only question in this case is a question of fact, whether the articles seized by the Government were or were not statuary." It was not a question of law, but a question of fact for the jury. The Judge, as he was bound to do, responded to that request by charging the jury in accordance with the request, and the jury without leaving their seats gave a verdict in favor of the defendant that he had violated no law.

And that is all there is, Mr. Speaker, of this stale old statuary story, dug up from the gutters to sustain the rotten cause of the Sanborn contract, and of the Jayne moiety system, and to bring discredit upon the name of Phelps, Dodge & Co.

Now, whether these transactions by the importers were moral or immoral is a question I am not called upon to determine. It is enough, how-

ever, to say in this connection that at that time no member of the present firm of Phelps, Dodge & Co. had any connection with it. It is enough to say that the firm which was then in existence, and the predecessor of this firm, was the old firm of Phelps & Peck; that the firm of Phelps & Peck never had anything to do with the importing of leaden statuary and busts, and that the story, even as to them, is made out of the whole cloth, thrown in here when there was no man supposed to be familiar with the facts to defend the firm of Phelps, Dodge & Co. against a charge entirely in harmony with the general character of the transactions which the Committee on Ways and Means have properly sought to reform, and this House has by its unanimous judgment condemned.

Again, the gentleman tells us Mr. Dodge claimed a particular interpretation of the statute in regard to the amount of duties which should be collected upon tin plates. I am informed by an honored merchant from Boston on the floor of this House, since that charge was made—for I knew nothing of it, and this is no time to be called on to defend an absent man against a charge made under the privileges of the House—I am informed by that honored merchant, who is familiar with the whole transaction, that, in regard to that, the Treasury Department fully sustained the claim which was made by Mr. Dodge.

Allusion has been made to the action of the Committee on Ways and Means in recommending the tariff bill which proposed a specific duty upon tin, and boxes in which it was contained. So far from being a cause of censure against the firm of Phelps, Dodge & Co., that transaction is evidence of their strong desire to conform to the law, and to guard against the defects and abuses existing under the law which had been the means of robbing them of \$271,000. Look at it for a moment.

What was the old law which is now condemned? If a man imported tin manufactured in the interior of England—and it is mostly manufactured in Wales—if he, by mistake, omits to put into the invoice the expense of cartage, or of telegrams, or of expressage, or of boxes, or of any other item whatever, under that old law, which finds its vindicator here, not only was the article forfeited, but the whole invoice in which that article was contained was forfeited.

Nay, more; it was not necessary to show that there was any intention to defraud the Government. The Supreme Court decided that when the word "fraudulently" was omitted it was only necessary to show that the invoice was entered at less than the actual cost, and that it became a matter of law in such a case to instruct the jury that the whole invoice was forfeited. It was under such an odious system that Phelps, Dodge & Co. were sought to be charged with \$271,000 of forfeiture. Now what was the

amount of duty of which it was charged they defrauded the Government? Why, sir, but \$1,600. Here, sir, is a firm which had paid more than fifty million dollars into the Treasury; while the Ways and Means Committee state it has been proved before them that they overpaid to the Government on other articles three or four thousand dollars of duty. Yet these men were to be held responsible in the large amount I have named for these trifling inaccuracies in their invoices. It was to guard against that that Phelps, Dodge & Co., and all the other tin merchants and importers of the country, presented the memorial to Congress from which the gentleman from Massachusetts only read the first name, that of Phelps, Dodge & Co., and that memorial asked that the tariff be changed. They were willing to have put on a duty which would give the Government greater revenue than they have derived from that source for the last three years. They thought one cent on the tin and boxes was enough. The Committee of this House put it at one and a quarter cents. That is what there is about that.

Now, who is Mr. Dodge? He is a man who has been a member of this House, the peer of any gentleman upon this floor, the man who, after all these charges were made against him, was elected, by the unanimous vote of the merchants of New York, President of the Chamber of Commerce in that great city, a position that he occupies to-day. Can a man acquire such a reputation and so enjoy the confidence of his fellow merchants if he is that rotten, and corrupt, and swindling merchant that he has been held up before this House to be by the gentleman from Massachusetts? Shall his good character go for nothing? Can long years of integrity and probity go for nothing? Shall his reputation for Christianity and piety, evidenced by the fruits that are welcomed everywhere by the Christian community as springing from a good heart, go for nothing? Is such a man to be ridiculed before your galleries as a man that preaches in the day time and prays at night? Is the American Congress to listen to harangues of that character?

Then the gentleman, after haranguing the House for two hours, now seeks to stifle the voice of the representative from New York, who has no other interest at all in this firm except simply to have justice done. It seems to me that this whole debate to-night has been in the nature of a funeral oration by the gentleman from Massachusetts over the dead; the dead and the corrupt; the dead and the condemned; the dead and the infamous. And if the gentleman from Massachusetts thinks that he is to be held as the savior of the republican party from the Ways and Means Committee, to whose eleven members he so triumphantly bids defiance, he will find that he is laboring under an egregious mistake.



The people are quick to discover an honest desire on the part of the Ways and Means Committee and of this House to correct abuses and reform the existing laws. This House, by both its parties, to their honor be it said, without regard to political considerations, have condemned these laws and wiped them out of existence, and they will be heard of I trust no more forever.

There was another subject I desired to speak on, but if the House will give me permission to print my remarks, I will not detain it longer this evening.

Mr. BUTLER, of Massachusetts.—If there be anything personal in them you cannot.

Mr. TREMAIN.—I will tell the gentleman that I intend my remarks to relate to the extraordinary debate, the extraordinary personalities, the extraordinary course that was taken in the closing hours of the debate upon the Geneva award bill, a bill that has passed this House. But I rejoice for the honor of my country that the triumph that was won here is destined, I believe, to be short lived and to yield no fruits. It requires not merely the consent of this House, but the consent of the Senate and the President, before a raid can be successfully made upon the public Treasury, whereby four millions of honest property can be confiscated and ten millions can be taken and given to a class of men who have no claims in law or equity upon them. That question is wholly postponed and to come before this House at its next session. I desire to notice some extraordinary aspersions, some extraordinary arguments, some extraordinary personal remarks that were made during that discussion; and I think it will be quite as proper, as that subject is still alive, to speak to it as to spend two hours in talking about dead issues. My speech would relate to the Geneva award, and I ask unanimous consent to print my remarks upon that subject.

Mr. BUTLER, of Massachusetts.—You shall not have mine, sir.

Mr. TREMAIN.—Amen. You will hear from me at Philippi. We will meet there.

Mr. TREMAIN.—Mr. Speaker, it is difficult to tell which most to admire, the high toned sense of honor and morality of the gentleman from Massachusetts, who sees so much fraud in the conduct of men who have been vindicated and sustained by the action of a court and jury, or his logic in finding in my argument a sufficient ground to condemn Phelps, Dodge & Co. Sir, I have stated distinctly, and the gentleman knows it well, that Phelps & Peck, who were the firm in existence when the statuary was imported, some forty or fifty years ago, had no agency whatever in its importation. They had no more connection with it than had the gentle-

man from Massachusetts, and yet, forsooth, he finds in my remarks sufficient to sustain his charges against Phelps, Dodge & Co., and proceeds to indulge in a general tirade of abuse against the merchants of this country—merchants whose names are synonyms for honor, for patriotism, and for integrity, and who would not thank me for vindicating them against the frivolous and unfounded aspersions of the gentleman from Massachusetts.

Again, he asks why did I denounce Jayne? I denounced the system with which Jayne and Sanborn were associated. I exonerate the officers of the law, for they are honorable officials in the City of New York, who, no doubt, did what honorable men should have done in executing the law. I would not be understood as criticising in any manner the action of the revenue officers of New York, for all of whom I entertain the highest respect and esteem. But it was the system I denounced, and I rejoice that it has been condemned and forever exploded.

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The debate here ended, and the House at a late hour adjourned; and during the remaining four days of the session no further allusion to the subject of moieties, seizures or Treasury contracts and irregularities was made in either branch of Congress.

The firm of Phelps, Dodge & Co., however, in view of the specific and unqualified charges renewedly and most publicly made against them by General Butler in his speech, and notwithstanding the immediate answer to and refutation of the same by Messrs. Roberts, Foster and Tremain, on the floor of the House, deemed it at the same time expedient to again come before the public in their own behalf; and, accordingly, on the 27th of June, 1874, they caused to be published the following card :

#### CARD OF PHELPS, DODGE & CO.

*In reply to the charges specifically preferred against them by Gen. Butler, in his speech before the House of Representatives, June 19th, 1874.*

TO OUR FRIENDS AND THE PUBLIC.

After the full statement heretofore published of the difficulty of our firm with the customs authorities, and the subsequent exhaustive examination of the whole matter by the Committee on Ways and Means, which resulted in the entire remodelling of the "Moiety" and "Seizure Acts," we had not supposed it would be necessary to add anything further in the way of explanation. But in the brutal and cowardly attack made upon us during the closing hours of Congress by General Butler, certain charges were preferred by him, in his character as a Representative, upon the floor of the House, against our firm, so definite and with so much of apparent authority that we feel called upon, in justice to ourselves and the public, to make once more a brief statement.

The charges specifically preferred were, in the main :

*First*—That we had, as a firm, attempted to defraud the Government and evade the revenue by importing metals in the form of works of art and statuary. In reply to this it is only necessary to say that the importations to which General Butler referred were made before the firm of Phelps, Dodge & Co. came into existence, and before any one of the present or late members of the firm became connected with the metal importing business—the senior member of the firm, William E. Dodge, being at the time engaged in the dry goods business.

*Second*—That in the Tariff Act of April, 1864, which temporarily increased the rates of duty on imports *fifty* per cent., Mr. Dodge went to the Treasury and had a comma taken out of one place and put in another, and thereby cleared \$2,250,000.

The exact facts in respect to this charge are as follows: In a very full revision of the tariff, as embodied in the Act of June, 1864 (and not the Act of April, 1864, as specifically mentioned by General Butler), it was decided by both Houses of Congress, after full discussion, that an increase of duties on tin and terne plates would imperil the large industries already taxed under the internal revenue, in which tin was used for the packing of fruits, fish and vegetables, meats and the like, and so tend to reduce, rather than increase the receipts of the Treasury. At the same time it was decided to increase the duty on sheet iron galvanized with an admixture of tin—which article had been imported under the name of “tin plates galvanized,” and so definitely and distinctly named in connection with and at the same rate as “galvanized iron,” in every successive tariff since 1857. The bill was passed on the 30th of June and went into operation immediately. On examining its provisions we found that while the duty on “tin and terne plate” remained unchanged at 25 per cent. *ad valorem*, the addition of a comma after the word “plates,” in the clauses “tin plates galvanized,” rendered the whole paragraph ambiguous if not absurd, and apparently imposed a new duty of 2½ cents per pound—an increase of 100 per cent. on existing duties. Seeing how impossible it would be to enter our invoices at two conflicting rates for one and the same article, we applied at once to the Collector for a decision in respect to the course to be followed. The Collector saw the difficulty, and referred us to Mr. Fessenden, then in New York, and just appointed Secretary of the Treasury. We called upon him, and he immediately stated to us and to the Collector that he had been Chairman of the Senate Committee and also of the Conference Committee, which had charge of the Tariff bill in question; that he fully remembered the discussion as to tin plates, in which he had taken part; that the full sense of both committees had been that tin plates should remain at 25 per cent. *ad valorem*; that the “comma” had evidently been added by mistake in the haste of engrossing, and could not be considered as the true interpretation of the law.

He accordingly ordered the Collector to pass the goods at 25 per cent., and stated that on his return to Washington he would issue a special order making the construction official; and this he did under date of July 22, after taking full time for consideration and consultation with his former colleagues in Congress and the experts of the Treasury Department. As finally interpreted by Mr. Fessenden, moreover, the law was not in our direct favor; but, on the contrary, had the technical error been allowed to stand, and to entail a very excessive increase of duties, the advance in the price of stock on hand would have yielded to us, in common with all other importers and dealers, a very considerable profit. The facts, therefore, were exactly the reverse of those stated by Gen. Butler.

*Third*.—General Butler states that in our large and complicated business every invoice brought day by day by us to the Custom House was wrongly stated, and that we were consciously and continually guilty of fraud.

General Butler knows this to be untrue. He knows, on the contrary (for as the paid

attorney of the informer he has given attention to the subject), that after a most careful and merciless examination of some thousands of our invoices by Jayne and his experts, aided by our own clerks, bribed to injure their employers, with the full use of our books and papers, there were found only some fifty that could in any way be made the subject of controversy; and that in the case of some of these, of from \$20,000 to \$30,000 each, the utmost possible loss to the Government could not have been in excess of from 80 cents to \$1 per invoice. And, furthermore, that the total loss claimed by the Government on all the invoices was only about \$1,600, out of an importation of some \$40,000,000, and covering the space of five years.

We believe General Butler further knows, but wilfully conceals the fact that the same error and misunderstanding of the intricate law which compelled us, under severe penalties, to invoice our goods both at cost price and at market price, led us, in the case of a great number of importations, to invoice their value above cost, which occasioned a gain to the revenue and a loss to ourselves immensely greater than the Government claims to have lost.

Finally—looking at all the circumstances and character of this speech, its constant falsifications and perversions of truth, and its brutal personalities, we are quite willing to leave the verdict as to its effect to any who have fairly looked into the matter of which it treats.

PHELPS, DODGE & CO.

NEW YORK, *June 26th*, 1874.

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## THE TRUE STORY OF THE LEADEN STATUARY.

The charge of importing lead in the form of images and statuary, with a view of fraudulently evading the customs revenue, having been specifically but falsely preferred by Gen. Butler, in his speech against the firm of Phelps, Dodge & Co., it is essential to the completeness of this extraordinary history, to incorporate with it at this point the following true story of the transactions referred to, as told for the first time completely by Hon. David A. Wells, late U. S. Commissioner of Revenue, in a communication to the columns of the *N. Y. World*, May 11th, 1874. As this communication, furthermore, was published full five weeks before the date of Gen. Butler's speech, and was extensively circulated and noticed by the press at the time of its publication, the malice and mendacity of Gen. Butler in making the false imputations in question a ground for a fresh assault on a firm which he, through his clients, had assisted in persecuting, is only too evident.

### A CURIOUS CHAPTER IN ECONOMIC HISTORY.

There is an amusing old story told of the magistrates of a certain country town in France, who, before the days of street lamps and gas, and as a better security against the unlawful acts of "vagrom men," passed an ordinance that "no citizen should walk out after dark without a

lantern," and that disobedience of the law should entail a heavy penalty. The watch, vigilant in the performance of duty, accordingly arrested, the first night after the law took effect, a well known and estimable individual, but of waggish propensities, and hauled him up before the local Dogberry on a charge of having broken the statute. The defendant, however, on being asked why punishment should not be inflicted upon him, averred that he had committed no offence, and, in support of his plea, produced a lantern. It being rejoined that the lantern had no candle, he next maintained that the law did not require that the lantern should contain any candle; and the statute being examined and the defence found valid, the arrested party was dismissed, and the law so amended as to read, "that no citizen should hereafter walk out after dark, without a lantern and a candle."

The next night the same person being found walking in darkness was again arrested and arraigned, but again maintained that he had committed no offence; and, in proof thereof, produced a lantern and showed that it contained a candle. "But the candle," said Dogberry, "is not lighted." "And the law," rejoined the wag, "does not require that it should be;" and this interpretation being found correct, the accused was once more discharged and the statute further amended so as to read, "that no citizen should hereafter walk out after dark without a lantern and a candle in it, and that the candle should be lighted."

The next night the same incorrigible and troublesome person was again brought up before the Court, and this time both watch and magistrate thought they had a sure thing of it; for, to all appearances, he had not on this occasion even made a pretence of complying with the law. But the triumph of the officials was of brief duration, for, to their utter disgust and amazement, the accused drew from his capacious coat pocket a dark lantern, and showed that it not only contained a candle, but that the candle was lighted and burning. Warned by this threefold experience, the statute was for a third time amended, and this time so fully and clearly that no further practical jokes were attempted, and the majesty of the law remained unassailed.

As thus told the above story is manifestly a broad burlesque, even in its application to stupid French "country officials," and without further foundation than the imagination of its author. But it is nevertheless a most curious and amusing circumstance that it has been reserved to the United States to furnish out of the history of its fiscal legislation a record of actual experience which, in many respects, is the exact and truthful counterpart of the French burlesque; and, as the incidents involved have more than once (but always incorrectly) been alluded to on the floor of



Congress, and may be found pertinent to prospective legislation and debate in respect to Custom House reforms and irregularities, it is proposed to now embody them for the first time, and, as a contribution to economic literature, in the form of a correct and complete narration.

Between the years 1816 and 1828, encouraged by the imposition of a low duty on imported metallic lead, the manufacture of white lead, as a basis for paints, came into existence in the United States and developed with great rapidity, the principal seats of the business being the cities of New York, Philadelphia and Baltimore. But about the years 1826-28 the discovery of the lead mines at Galena, Ill., became generally known, and as the first reports were to the effect that the deposits were of such unparalleled richness, purity, magnitude and easy accessibility as to make it only a question of time when the whole world, from sheer inability to compete, became wholly dependent for its supplies of lead on this one locality, it was at once considered desirable by many people to establish, so far as fiscal legislation could do it, a most extraordinary economic principle, and one which from that day to this has proved popular in all our tariff enactments; and this was to make the discovery or recognition of the existence of any great natural advantages—either in the way of mines, soils, climatic advantages, forests, means of intercommunication or national characteristics—the immediate occasion for cursing the country by the creation and imposition of some new tax, thereby making dear what was before cheap, and endeavoring to work up to a state of abundance through conditions of scarcity artificially created and unnecessarily perpetuated. In this particular instance the principle was exemplified by raising the duty on lead imported in pigs and bars from one cent a pound to three cents, and to this extent increasing to the consumer the price of the raw material, whether of foreign or domestic origin, and of all manufactured products in which lead entered as the principal constituent. As the duty was not at the same time correspondingly advanced on the import of white lead, and as the lead mining interests of Galena were not prepared to supply at any price the immediate demand thus artificially created for their products in the domestic market, the American manufacturers of white lead all at once found their business threatened with utter destruction; and, with intellects preternaturally sharpened by a prospective loss of a large invested capital, they looked shrewdly about to see in what manner they could save and protect themselves.

And putting on their spectacles, and scrutinizing carefully the entire tariff, as modified by the special Act of 1828 referred to, they soon discovered that the Government, while effectually closing and barring up the big door by which foreign lead could be imported, had inadvert-

ently left wide open a smaller door beside it, inasmuch as while Congress had prescribed a duty of three cents per pound on lead imported in pigs and bars, they left a prior duty of fifteen per cent. *ad valorem* on the import of *old lead*, fit only to be remanufactured, unrepealed and in force. Those were the days of packet ships and slow communication with the Old World ; but we may readily believe that no time was unnecessarily wasted by those interested in this discovery ; and at the earliest practicable moment afterwards agents of nearly every important American house engaged in the importation of metals—Barclay & Livingston, Boorman, Johnson & Co., Hoffman, Bend & Co., Phelps & Peck, William Wright & Co., Asa Fitch, and many lesser firms—were ransacking the markets of Europe for the purchase and shipment to the United States of old lead. Of course, the legitimate market supplies, never great of this peculiar article, soon gave out, but the agents and correspondents of the American houses being Yankees, proved fully equal to the emergency, and a scheme was forthwith devised to replenish the stock by exchanging new lead for old, and contracts in more than one instance, for example, were actually entered into and carried out for stripping from extensive factories in different parts of England their old lead roofing—lead being then used more extensively than now in the place of slate—and replacing it without expense to the owners with new roofing on condition of receiving the old material.

In the course of time the old lead thus collected began to make its appearance on this side of the Atlantic, and arriving in large quantities—almost by the ship load—at the ports of New York and Boston, naturally attracted the attention of the Custom House authorities, who at first demurred to its entry at the low rate of 15 per cent. *ad valorem*. The matter, however, being referred to the Treasury Department at Washington, an answer soon came back that the position of the merchants was unimpeachable, but the Department would have the law amended as soon as possible.

But the merchants by this time, in studying up the fiscal legislation of Congress in respect to lead in pig and old lead, had made another discovery—and that was that the Tariff Act in force was mandatory to this further effect, namely, that if any person or persons should import musket balls or leaden bullets into the United States they should pay to the custom authorities a duty on the same of 15 per cent. *ad valorem*, and, in default thereof, the goods should be forfeited and the importers be punished. Like good citizens, therefore, the merchants made haste to obey the law, and their agents in Europe being duly instructed, lost no time in buying up all the musket balls and leaden bullets they could find for sale, and when the foreign markets were exhausted they had musket balls of the regulation

weight and calibre largely manufactured, and all were duly shipped as fast as possible to the United States. Again the Custom House authorities objected, but again came back the response from Washington that the law was explicit in respect to the 15 per cent. duty, and that nothing could be done in the way of restraining the importation of leaden bullets in place of pig lead until Congress had provided further legislation on the subject.

But the Tariff Acts in force from 1828 to 1832 were, however, almost as much a mystery and a muddle of perplexity as are the acts under which the customs are at present administered, and it was only after continuous study and investigation that their full depth of meaning and of wisdom could become evident. But the success attending the import of old lead and musket balls had been so remarkable, and the preservation and resuscitation of the "white lead" business so encouraging, that the merchants were stimulated to further fiscal investigations; and again putting on their spectacles, they discovered two other remarkable provisions of the then existing tariff which heretofore had not been considered of much importance. These provisions related, the one to "leaden weights" of all descriptions, and the other to "sounding leads," and were to the effect that if any person imported any of these articles into the United States he should pay on the same a duty of 15 per cent. *ad valorem*.

It seems almost unnecessary to relate in detail the consequence of these discoveries, but it sufficeth to say that those were the good old days when false standards were far more of an abomination than they now are, and it was astonishing how great a demand all at once appeared to have been created in the United States for full, fresh, and new sets of leaden weights (from half an ounce to fifty-six pounds and upwards, but notably of the heavier denominations), which had not had their accuracy impaired by continuous use and abrasion. If the exact truth, moreover, could now be known, it might also appear that many persons at that time (especially in the cities of New York and Boston) had somehow become indoctrinated with the idea that the possession of more "weights" would in some way increase the quantity of things to be weighed—in the same way as the progressive men of the present day have brought themselves to believe that the possession of more paper money will increase the value and quantity of the things that this same money can buy. Those were the days, also, when clocks were high and stood in corners rather than upon mantels, and were moved by weights rather than by springs, and our ancestors of forty years ago—and none knew better than they that "time is money"—all at once seemed possessed with the desire to have more clocks, for the import of heavy leaden clock weights, with iron hooks neatly fitted to one end, and which, *prima facie*, could be only used for the manufacture of

clocks, all at once increased and rapidly became a business of magnitude.

Navigators, also, about this time, it might be inferred, became more intelligent; or, if not more intelligent, then, through a desire to save their insurance premiums, more cautious; or, if not these, then the desire of American geographical students to study more accurately the sea bottom, might have been abnormally stimulated; for in what other way could an excessive and unusual import of deep sea sounding leads be accounted for? leads small, leads large, leads of two ounces weight, leads of seventy pounds weight, leads a few inches in length up to leads two feet in length—all with an eyelet at one end for the sounding line attachment, and a cavity at the other for the reception of the tallow, by the agency of which specimens were to be brought up from the sea bottom.

But the Custom House authorities were practical men. They indulged in no philosophical reflections as to any abstract possible uses of the imported articles in question. They saw in all of them lead and lead only—and on lead, in the interests of the Galena mines and of the revenue, they wanted a duty of three cents per pound. They accordingly, as opportunity offered, seized and refused to deliver the exceptionally large invoice of “clock weights,” “scale weights” and “sounding leads,” and the appeal, as usual, from their proceedings went up from the merchants to Washington. But if the Custom House officials were practical men, the Treasury magnates at the capital, on the other hand, were strict constructionists, and as they found the statute written so they interpreted it; and in all cases the arrested importations of the merchants were, after a little delay, restored and admitted to entry; and in at least one case, where three cents per pound had been paid under protest on the above mentioned leaden articles, the difference between that sum and fifteen per cent. was returned to the merchant by the Treasury. In fact, “as sea stores” of all descriptions were then on the free list, “sounding leads” might have been claimed to be exempt from all imposts; but the merchants were generous, and this question does not appear to have been raised.

It is not to be denied, nevertheless, that by this time lead had got to be a very irritating topic to a Federal official; and, indeed, it was only necessary to say “lead” to a United States district attorney, a collector or revenue inspector, to seriously disturb his mental equanimity. An opportunity to retaliate upon their mercantile tormentors was, therefore, earnestly sought for, and before long such an opportunity seemed to present itself. A prominent New York house in the metal trade, which, in connection with some half dozen or more leading firms, had been engaged in importing old lead, musket bullets, sounding leads, clock weights, and the

like, and passing them, under a strict but legal construction of the statute, at fifteen per cent. *ad valorem*, imported on one occasion, during the period under consideration but subsequent to the events narrated, an invoice of stereotype metal. Now, stereotype metal was then on the free list of the tariff, and subject to no duty, and in this particular instance the importation had been made in consequence of a direct order received from one of the largest type foundries in New York; but, as it came in pigs or bars, was in unusual quantity, and consisted merely of lead mixed with comparatively small proportions of antimony and bismuth, the Custom House officials conceived the idea that it was only a new device of the enemy to take advantage of the faulty statute, and that the ultimate intent was to remelt the stereotype metal, separate its several constituents, and then dispose of the lead independently. The whole invoice was accordingly seized, and suit commenced in the United States District Court for its forfeiture, the Government having previously ascertained, by means of an analysis of a sample bar, made at their request by the then famous New York chemist, old Dr. Chilton, that the metal contained somewhat more than eighty per cent. of lead. The District Attorney at that time was Price, afterwards best known for some financial irregularities. The merchants, of course, resisted, and on the day of trial appeared in court with the type founder on whose account the metal was ordered, and other experts, to prove that the import and prospective use of the metal were entirely legitimate. The Government opened their case by stating their assumption that the metal was not imported for the manufacture of stereotypes but for the purpose of defrauding the revenue, and, calling as their first witness Dr. Chilton, examined him somewhat as follows :

“ *District Attorney*.—What is your profession ? *Dr. Chilton*.—A chemist.

Q. Where were you educated ? A. In Edinburgh, and have followed for many years my profession in New York.

Q. Have you made an analysis of this imported metal (at the same time referring to one of the bars included in the invoice) ? A. I have.

Q. Of what does it consist ? A. Of some eighty per cent. of lead ; the remainder, antimony, bismuth and tin.

Q. Is it possible to separate these several constituents, as thus mixed, so as to use and sell them separately ? A. Perfectly so.

Q. Please tell the Court what, in your opinion, would be about the expense of the operation. A. Rather more than all the materials are worth.”

There was silence for a few moments. The District Attorney did not seem to be possessed of a further inquiring spirit. It was a warm summer's day, and the Judge (Betts), after mopping his face with his hand-



kerchief, stretched his head forward, and somewhat brusquely asked if Mr. Price had any rebutting testimony, and, on receiving a negative reply, fell back in his chair with the remark, "Then the case had better be dismissed." And dismissed it was.

But the troubles of the Custom House officials were not yet ended ; and here comes in that portion of this curious series of events which is best known to the public, is the most comical, and which, as has already been remarked, is often referred to in Congressional debates, when topics of the tariffs, smuggling, or under valuations are under consideration.

The wicked merchants, encouraged by their complete success as law interpreters, had continued their tariff investigations, and had further found among its provisions in force one to the effect that "metal statuary and busts" might be imported free of duty. It was thereupon immediately determined by the merchants that if the American people desired to cultivate their taste, or keep alive the memory of the good and great of former days by adorning their houses and grounds with metal statuary, they ought to have the opportunity of so doing ; and, accordingly, large orders were sent to Europe—at that time the exclusive seat of high art—for the manufacture of busts—mainly colossal—of Washington, Lafayette, Napoleon, Moses and the prophets, and not forgetting, also, duplicates or reproductions of the great works of antiquity ; and as lead, of all the metals, seemed to possess in the highest degree the qualities of durability tenacity, cheapness and facility of being moulded, the statuary in question was directed to be made of lead. It should also be remarked in this connection that lead statuary fifty years ago was not the abnormal, exceptional thing it now is. In fact it was then the common material for cheap imagery throughout Europe, when something less expensive than bronze or marble was desired, and filled the place which is now supplied by cast iron and zinc, but which materials fifty years ago were not thought susceptible of ornamental adaptation. And that the lead statuary in question was really ornamental is proved by the circumstance that some of it thus imported is yet in use for ornamental purposes, one piece embellishing at the present time the garden of an eminent banker, William Butler Duncan, on Fifth avenue. From such an æsthetic point of view, also, did the prosaic Custom House officers regard the first importations of these leaden images, and so might they long have continued to regard them, had the persons in Europe entrusted with their shipment been more careful in respect to packing. But when Washington came up out of the hold of the vessel after a rough voyage with his nose punched in, and Napoleon with his eyes sufficiently askew to require an operation for strabismus, and Moses looking very much like a subject on whom the law ought to be

administered rather than an author and administrator of the law, suspicion was naturally excited, and forthwith the statuery was seized and held for forfeiture by the customs authorities. In answer, the importers, as before, pointed to the clear and explicit provision of the tariff then in force—"Metal statuery and busts free"—and urged the Government, if they doubted, to institute a suit. But Mr. Price, the district attorney, had once burned his fingers with cold lead, and persistently refused to bring the matter into court. Thereupon one of New York's then best known merchants and publicists, David Leavitt, Esq., caused an invoice of the questionable statuery to be imported into Boston, and arranged with the district attorney of that port to try the issue in respect to its dutiable character. When the trial came on Daniel Webster appeared as counsel for the defence. His speech in answer to Government was very brief, but to the point, claiming the law provided for the admission of metal statuery, busts, etc., free, with no limit as to the kind or quantity, and that the imports in question were metal statuery, though made of lead. When the case closed Mr. Webster requested the Judge to charge the jury that they were to decide whether the articles were metal statuery, and if they found that they were, they must bring in a verdict for the defendants. The Judge substantially did as requested, and the jury, in a few minutes after retiring, returned with a verdict for Mr. Leavitt.

The decision in this case practically put an end to the whole controversy. The lead statuery under seizure was released, the import was allowed to go on unrestricted, and, as soon as circumstances permitted, Congress amended the tariff by equalizing the duties on all forms of lead, and at the same time satisfied the white lead manufacturing interest by fully protecting their products from foreign competition.

As this curious story has been heretofore told, the importation of the leaden statuery has been popularly attributed to the agency of the well known New York firm of Phelps, Dodge & Co. This is, however, an error. The firm of Phelps, Dodge & Co. was not at the time of the occurrence of these events in existence; and the old firm that preceded them—namely, that of Phelps & Peek—although large importers of metals, were not concerned in this matter of the leaden images; Hon. W. E. Dodge, subsequently the senior of Phelps, Dodge & Co., being then engaged in the business of dry goods jobbing and importation, while Mr. James, senior (now of Liverpool), was a resident of New York, engaged in the wholesale grocery business.

The credit of originating the idea of importing lead in the form of busts and statuery was undoubtedly due, in the first instance, to Asa Fitch, Esq., who, prior to engaging in mercantile pursuits in New York, had

served for a number of years as American consul at one of the ports of France, where the extensive use at that time made in France of lead for statuary and other ornamental purposes, had, doubtless, become to him familiar and suggestive. Subsequently Mr. Leavitt, as well as other New York merchants, extensively availed themselves of the same expedient.

It would be a mistake, furthermore, to infer that like muddles and perplexities cease to characterize the tariff, when Congress, taught by experience, successively remedied the omissions and commissions of the Act of 1828. On the contrary, there has been hardly a tariff enacted since that time which has not the absurdities of the old lead, the musket balls, the clock weights, the deep sea leads, and the leaden images in some form repeated. Thus, for example, in the tariff of 1846 a duty was imposed on flaxseed of twenty per cent., but in the tariff of 1857 linseed was made free while flaxseed was charged fifteen per cent. duty. As might have been expected, the import of linseed was always large, and that of flaxseed always very small.

Again, in 1864, the manufacturers of spool thread, anxious to shield themselves against all foreign competition, obtained a prohibitory duty on the import of unwound cotton thread or yarn. When the law went into effect it was found that the result of the new duty would be the destruction of the manufacture of fine elastic fabrics, suspenders, gaiters, etc., as well as of certain worsted fabrics, which were dependent on Europe for certain qualities of warp yarns not then manufactured on this side of the Atlantic. The difficulty was, however, got over by an absurd Treasury ruling that cotton warp or yarn, intended for use in the manufacture of elastic worsted or woollen fabrics, was not unwound thread or yarn, but a manufacture of cotton "not otherwise provided for."

Another example of customs romance of a prior date was that of a manufacturer of New England, who, finding the growth and development of his business of making "cloth covered buttons" seriously interfered with by the almost prohibitory duties levied on the importation of foreign silk, worsted and other suitable fabrics, resorted to the expedient of importing such fabrics free, or at a nominal duty, in the form of *rags*, *i. e.*, irregular strips and cuttings; to which form it would have been necessary to reduce the fabrics intended for button covering, even when imported in the piece.

And, coming down still later, Congress, in 1872, enacted a general reduction of 10 per cent. in tariff rates on metals and manufacture of metals—watches and jewelry excepted. It is clear, however, that "watch cases" are not "watches," and neither are springs, escapements, wheels, etc., etc., considered separately. The course of trade, therefore, in respect to imported watches, soon adjusted itself as follows: The movements taken out

of the cases, packed in separate cartons, but carefully numbered, are, when thus imported, clearly manufactures of metals, and as such entitled to the rebate of 10 per cent. In like manner the cases, without the essentials of a watch in them, are nothing but manufactures of metal (gold and silver), and must be also thus treated in respect of duty. Watches, of course, when they come in as watches, pay full duty !!!

Thus the old, old story of the effect of impolitic and absurd restrictions on trade and commerce, the lesson of which Europe through centuries of experience learned and profited by, continues to repeat itself in the fiscal policy of the United States. Let us hope that the result here, too, at no distant day will be what it has been elsewhere, namely, to force men to the conclusion that the best system of taxation is to tax but a few things, and then leave those taxes to diffuse, and adjust, and apportion themselves by the inflexible laws of trade and political economy—and, furthermore, to recognize that no system of government has any just claim to the title of free which arbitrarily takes from its citizens any portion of their property except to defray the State's necessary expenditures.

TESTIMONY OF THE COLLECTOR OF NEW YORK AT THE TIME OF THE LEADEN  
STATUARY IMPORTATION.

It is interesting to note in this connection the following testimony of the Collector of the Port of New York at the time the anomalous importations, alluded to in the above article, occurred :

We were, says the New York *Express* (July, 1874), on Saturday afternoon, favored by an interview with the Collector of the Port of New York when Gen. Jackson was President, and under whom the lead statutes, over which Gen. Butler became so violent, were imported free of duty.

It was exceedingly agreeable to listen to the intelligent and explicit statement of the history of that amusing transaction, in which the present firm of Phelps, Dodge & Co., nor the preceding firm, nor any of the members of either of them, were not in anywise directly or indirectly connected. Says the old Jacksonian Collector :

"It was another party, whose name we could give, if required, who ludicrously figured in that business of the importation of the busts of Washington, Franklin, Jefferson, Adams, and numerous well known, and, at that day, revered patriots."

The Collector, at the time, says he objected to the then sudden burst of patriotism, as manifested by the increased demand for busts of the revolutionary patriots, but was overruled by the then Secretary of the Treasury.

This serio-comic story of the importation of leaden statues by Gen. Butler, as applied to any of the past or present firm of Phelps, Dodge & Co., is, we are authorized by the old Collector to state, wholly unfounded in truth, and that, during his whole term of office under President Jackson, no firm enjoyed a more honorable and enviable reputation in its dealings with the Custom House than the then firm, now Phelps, Dodge & Co.

At the time of these lead bust importations Mr. Wm. E. Dodge, says the Collector, was a young man filling the modest position of a clerk, not a member of any firm.

COMMENTS OF THE PRESS.

As might have been expected, the extraordinary debate in the House of Representatives initiated by General Butler, a very full report of which

(copied from the columns of the *Congressional Record*) has been herewith given, excited much attention throughout the country, together with a feeling of general regret and disgust that any circumstances should have made it permissible for the chief actor to have so conspicuously occupied one of the national halls of legislation for the purpose of gratifying his personal animosities and serving clients whose conduct both Houses of Congress had previously declared disgraceful. The following extracts from the leading newspapers of the country are a most striking testimony of the state of public opinion at that time, both in regard to General Butler and the persons whom it was his chief object to injure and defame :

#### THE CASE OF PHELPS, DODGE & CO. AND THEIR ASSAILANT, GENERAL BUTLER.

[From the N. Y. EXPRESS, June 27th, 1874.]

The better portion of the American public are touched with a feeling both of indignation and mortification at the recent language of Gen. Butler, M. C., from Massachusetts, in the U. S. House of Representatives, in connection with the alleged practices of the leading commercial house of this country. Not only was the good name of this time honored house assailed, but the private character of the senior partner of the firm, William E. Dodge, Esq., was most wantonly libelled, under the known protection of non-responsibility for words spoken in debate in the House. Had the language of Gen. Butler been uttered in any Police Court, even the lowest, it would have been promptly rebuked. It was used *ad libitum*, without one word of disapprobation from the presiding officer. Not only the motives of the firm, but even the religion of its individual members, were both maligned and stabbed in an American Congress, and the lifetime good name misrepresented and most wickedly criticised.

Christianity, truth and decency thus being set at defiance, alike call for severe rebuke for such a prostitution of the liberties of debate by a representative in Congress. Every minister of the Gospel and teacher in America should feel indignant at the characteristic sneers at the followers and believers in the truths of the Saviour.

Certainly our forefathers did not intend to protect any such freedom of debate in Congress, nor is it in the true spirit of the Constitution. We mistake the spirit of Christianity in America if the stabs of Gen. Butler are not hurled back with redoubled indignation. The pulpit and the press alike should give a general denunciation of such slanderous language in the House of Representa-

tives by one of its members, under the assumed protection of non-responsibility for words spoken in debate.

All of this was an attempted denial of the truth of the report of the Special Committee of the House of Representatives on all and singular as to the alleged technical under valuation of goods by this firm, as to the constructive loss to the Government of \$1,600, in a business that exceeded \$40,000,000 of importations during the last five years,

While the capital and enterprise of this house have added *millions* of gold annually to the Treasury, in the shape of paid duties, to the great advantage of the credit of the country, yet because hired informers, without character or responsibility, after an arbitrary seizure of the books and papers, and the use of corrupted clerks, had made out a technical loss to the Government of \$1,600, this world-wide house of established integrity and honorable fair dealing was systematically assailed and mulcted out of nearly \$300,000 in the name of the Government, to be subdivided mainly among informers and Government officials under the advice and sanction of Gen. Butler, as counsel for the prosecution, and while a member of Congress.

The guilty officials having failed to substantiate their allegations before a disinterested committee of the House, and a report having been made in full corroboration of the uniform statements of Phelps, Dodge & Co., and the matter virtually closed the whole original, exaggerated and unfounded allegations, are again spread before the public, through the defeated counsel of these informers, and under the protection of being a member of Congress.

These assaults on the floor of the House are statements which we have repeatedly re-



futed and rebuked. Indeed, all the insinuations and allegations of the past made against the business standing and transactions of Phelps, Dodge & Co. have fallen to the ground. We now give to the public the complete refutation of the last stab of Gen. Butler, after the verdict of the Special Committee had been rendered against him. This last wanton attack upon private character exhibits, in its most hideous and wicked aspect, the spirit that has characterized the black mailing of one of our most responsible and honorable American commercial houses, and fully justifies the strongest language of condemnation that can possibly be expressed.

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[From the N. Y. WORLD, June 20th, 1874.]

No one can beat Butler in two things, viz., in soundly thrashing the subject in hand destined for abuse; and, secondly, in repartee; but in this case his powers served him to little purpose, for at no time during his eventful career did this master of abuse get so terribly damaged and punished. But it may be readily imagined that the hero of Fort Fisher was not a little astonished to hear himself accused by Foster, of Ohio, as a receiver of stolen letters and a stealer of telegrams, to say nothing of the spoons allusion, or the reading of Jayne's statement that Butler was his lawyer and feed by moieties: nor did he escape a scorching about the Sanborn swindle. But the unkindest cut of all was when the diminutive Roberts, of New York, assumed the stature of a giant, and in the most contemptuous manner charged Butler with cowardice for not coming into court when he was wanted. "You pleaded weakness like a sick girl, and called out, 'Titinius, give me drink'" It took all Butler's audacity and the display of all his wonderful readiness of repartee to get himself out of the hall not the worst drubbed man in the country.

It is universally admitted that Butler made a blunder in not holding his tongue; for the very object he had in view is frustrated by his own intemperate attack. His aim was to annihilate Phelps, Dodge & Co., and, as far as the House is concerned, every member except Butler feels great sympathy for the attacked firm, and the papers just come to hand evince the same sympathy. It has been shrewdly suggested to-day that Butler was obliged to make the attack. It is said that, as Boutwell, Richardson and Daves sold themselves to Butler, so Butler sold himself to his mystic and dark majesty, Jayne. It was Jayne who ordered last night's farce and made But-

ler deliver the speech he has had in his portfolio these eight weeks. Indeed, all the points were old and blunted by age. The abuse alone, which is of the Butlerian fragranciness, was fresh. It is noteworthy, too, that Butler went for the scalps not only of Phelps, Dodge & Co. but for those of Republican members. He was gratuitously and liberally polite to the Democratic party as a party, prophesying its speedy return to power. Then, and only then would he submit to a voluntary investigation. Truly Mr. Butler seems to forget that the mission of the Democratic party is to purify the land from the putrescence in which he and his have soaked it, to undo what they have done, and not to waste time investigating the like of Butler.

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#### BUTLER ANSWERED.

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[From the Boston Post, June 29th, 1874.]

The odious personalities and the evident malice of Gen. Butler's supplementary speech on the Moieties Bill render any response unnecessary. His remarks carry their own condemnation. But upon the question of facts involved, Messrs. Phelps, Dodge & Co. furnish in a card which we print elsewhere a refutation of the monstrous charges on which Butler based his infamous abuse of that firm. In this reply Butler's accusations are taken up categorically.

This explicit denial of the facts on which Butler founded his tirade at once deprives that offensive and unseemly exhibition of all excuse. But, aside from any consideration of decency, this assault upon an old and honorable house has a yet blacker aspect, in view of the fact that Butler could hardly have been ignorant of the falsity of the charges which he brought. With regard to the lead statue cases, they and the persons concerned in that evasion of duty have been notorious; and it is inconceivable that the paid attorney of Jayne, who must have had every opportunity of information about the extent of the alleged frauds in invoices, could be so deceived as to the character and amount of the errors discovered. The time and circumstances of Butler's speech confirm the impression. It was made at the close of the session, after the repeal of the law, when no correction could be made by the accused merchants before the adjournment of Congress, and when no opportunity remained for an investigation into the slanders upon Secretary Fessenden's memory. It was practically useless, and ineffective in any way except as it offered relief to

the spite of one who had seen a profitable client suddenly retired from business at a time when the prospect of great cases and fat fees was never better. The speech was in every part so consistently a special plea for Jayne's extortions as to give new color to Mr. Foster's statement that Butler's zeal on the floor of the House was the zeal of paid counsel. The manly, indignant refutation now furnished by Messrs. Phelps, Dodge & Co. finishes the characterization of this extraordinary exhibition.

[From the BOSTON DAILY GLOBE, July 29th, 1874.]

The reply of Phelps, Dodge & Co. to the charges of Gen. Butler, in his recent Congressional speech, is as vigorous as it is conclusive. It used to be said of Daniel Webster that his statements were arguments, but the statements of Phelps, Dodge & Co. are so cogent as to amount to absolute proof. Their simple record of facts disposes of the charge of evading duties by unporting lead as statutory, by showing, as we have before stated, that these things were done not only before the firm came into existence, but before any one of its present or late members became connected with the metal importing business. The accusation that, by changing the position of a comma in the tariff Act of April, 1864, they were enabled to clear \$2,250,000, is refuted by the views and action of Mr. Fessenden, then Secretary of the Treasury, showing that their course was highly honorable throughout this whole matter. As to the alleged frauds in their other invoices, Phelps, Dodge & Co. not only convict Gen. Butler of glaring falsifications, but of a blundering stupidity which has fortunately overreached itself and fixed upon him a reproach which must deservedly impair his reputation either for honesty or skill as a political manager.

#### BUTLER'S MENDACITY.

[From the N. Y. JOURNAL OF COMMERCE, June 27th, 1874.]

We presented, many years ago, a graphic history of the attempted importation of lead as works of art, but we were not surprised that Butler ignored all the truth in the matter, and applied to Messrs. Phelps, Dodge & Co. an old joke, with which the house he named had no connection, since his unscrupu-

lous character as a controversialist is too well known for the public to expect anything better of him. The other portions of his bitter speech have no better foundation in fact. The card from the house in question is a complete refutation of his slanderous imputations.

[From the NEW YORK DAILY BULLETIN, June 27th, 1874.]

The card from Messrs. Phelps, Dodge & Co., printed elsewhere, puts a different complexion on Gen. Butler's rabid attack. In justice to the firm, we submit it to our readers without any further comment, and wish only to observe that as long as this explanation remains unanswered, Gen. Butler's charge against Mr. Dodge of having caused the late Mr. Fessenden to rule for lower duties for the benefit of the house of Phelps, Dodge & Co. appears simply ridiculous.

[From the N. Y. WORLD, June 17th, 1874.]

Phelps, Dodge & Co. publish in our columns a card replying to the charges made in the scurrilous Moity-Sanborn speech of Gen. Butler, during the closing hours of the last session of Congress. It gives the history of the galvanized tin plates legislature, which Butler made the basis of a charge against Secretary Fessenden that in eight years he had, by the tampering displacement of a comma, lost the revenue over \$30,000,000—a charge from which we defended the late Secretary by an appeal to the public records, showing its utter groundlessness. Phelps, Dodge & Co. show by equally cogent proof, drawn from the private history of their business with the Department, that Butler's accusation was equally false which attributed to them a profit of \$2,250,000 from their procurement of the displacing of that comma. The much abused metal merchants describe Butler's attack as "brutal and cowardly." Strong language can be forgiven them; but the attack seemed to us ignorant, blundering and stupid. And in its public aspects we repeat what we said the other day, that it is disgraceful to Gen. Butler himself to be so unfamiliar with tariff legislation, and still more disgraceful that in a House of Representatives fresh from tinkering a new tariff, and in a Committee of Ways and Means presumably familiar with every source of revenue, not one member out of 300—anxious to catch him tripping—not one member rose to

rebuke and correct General Butler on the spot.

[From the BOSTON TRANSCRIPT, June 27th, 1874.]

Phelps, Dodge & Co., of New York, obtained in Congress, yesterday, a thorough exoneration from the unjust charges preferred against them by interested parties, *i. e.*, they were made the victims of the most venomous blackguardism by the Essex representative, which now-a-days is considered the best endorsement possible from that source.

[From the Norwich, Conn., DAILY ADVERTISER.]

Phelps, Dodge & Co. publish a card in the New York papers of this morning, which completely confutes the charges specifically preferred against them by Ben. Butler in his recent speech in the House of Representatives, and conclusively proves that Butler, as a paid attorney of Jayne, made use of his official position to maliciously utter the most unfounded slanders. How long, how long shall the councils of the nation be disgraced by the presence of such a scoundrel?

[From the N. Y. TRIBUNE, June 26th, 1874.]

The correspondent in Brooklyn, whose friendly criticism of our position on the moiety bill we published the other day, deserves a few words of reply. "Your pungently expressed indignation against Ben. Butler last week," he says, "was too strong, unless Mr. Dodge can come out with a flat footed denial of the 'comma' business and the Goddess of Liberty fraud." \* \* \* The *Tribune* cannot, must not champion hypocrisy. We have never put ourselves forward as the champion of Mr. Dodge, or any other individual merchant; on the contrary, we have insisted that the personal character of the victims of Custom House rapacity had no bearing upon the question of reform. To suppose that we urged the repeal of the moiety law because the most conspicuous of the recent sufferers under it was Mr. William E. Dodge, and because we believed William E. Dodge to be a good man, is a gross misapprehension of our motives and object. The reasons for repeal would have been just as strong if the victim had been William M. Tweed. The moiety law was a scandal because it could not be enforced without hideous abuses, because it imposed penalties entirely disproportionate to the alleged offence, because it punished men mercilessly for technical and unintentional infractions of the statutes, and gauged the

amount of the punishment not by their guilt but by their fears and their necessities, because it demoralized the whole customs service, and because it violated the time honored doctrines of personal liberty which were once so dear to every patriotic American. The defence of Mr. Dodge, therefore, was not pertinent to the main issue; and although the great forfeiture case in which his firm was involved has frequently been referred to as an illustration of the oppressions of the law, his conduct in other transactions was not under examination, and it was not our part to protect the honorable reputation which he has earned by a virtuous life.

The firm, however, has "come out with a flat footed denial," and we fancy our correspondent will find it sufficiently pointed and emphatic. Gen. Butler charged Phelps, Dodge & Co. with fraudulently importing lead in the form of "statuary" in order to avoid the duty. The answer to this is that when the famous lead statuary cases occurred, the firm was not yet in existence, and none of the present or late members of it had any connection with the metal importing business, Mr. William E. Dodge being at that time a dry goods merchant. Gen. Butler also charged William E. Dodge with inducing Secretary Fessenden to transpose a comma in a tariff bill, whereby the Government was defrauded of millions which it ought to have received in the form of increased duty on tin plates. The reply which we print to-day makes it perfectly clear that there never was any intention in Congress to make the increase of duty (100 per cent.) which Gen. Butler pretends, and that the construction adopted without any hesitation by the Secretary was the only reasonable and just one. Moreover, Mr. Fessenden, who was Chairman of the Senate Finance Committee during the debates on the bill, framed the disputed sentence himself, and must have known, if anybody did, precisely what it meant. These answers are final. There is nothing more to be said by Mr. Dodge—or by Gen. Butler.

## THE MOIETY SYSTEM.

[From the N. Y. EVENING POST, June 30th, 1874.]

We trust that the merchants of our great importing cities will not be lulled into false security by the success of their recent efforts in wresting a repeal of the moiety system from Congress. If they do they will surely have cause for repentance. They won their victory against a battalion of moiety sharers, who held a large force in reserve, which

would have been displayed at any time the contest had seemed doubtful. Mr. Butler, of Massachusetts, was the only political captain whom Jayne pushed openly into the front of their line of battle. But there were other members of Congress, less directly under Jayne's command, who would have borne their part in the fray if it had become expedient. The best thing the merchants can do is to keep the public conscience alive to the enormity of the system under which Jayne and Butler fattened themselves, so that at last it shall become as hopeless to reëstablish it as it would be now to reëstablish African slavery. No opportunity should be neglected to expose the misrepresentations concerning the moiety system, with which Congress was flooded in the closing hours of the session, and which otherwise may some day be referred to as uncontradicted and by consequence as incontrovertible.

As an illustration of the misrepresentations to which we refer, we will take the familiar case of Phelps, Dodge & Company.

Commenting on the speech and the card, we remarked that Phelps, Dodge & Company "had no need thus to defend themselves, for the extravagance and malice of the speech were its own refutation." We adhere to this remark. But let us not be misunderstood to imply that it is not for the general interest of commerce and honest trade to minutely expose Butler's false statements, and to keep their falsity present to the public mind, however little such details may be needful for the vindication of the good name of the particular firm which we have mentioned.

In regard to Butler's allegation, therefore, which is referred to in the extract quoted above, that every one of the disputed invoices of this firm shows that it was consciously guilty of fraud, we have taken pains to examine the under valuations in some of the invoices comprised in four different shipments, as they were exhibited in the debate in the Senate on June 10, and we subjoin a brief tabular statement of the results of our investigation, which shows, in successive columns, (1) the dates of the importations and the names of the vessels; (2) the kind of goods; (3) the amount in dollars, of these invoices, which was actually confiscated; (4) the amount in dollars of the actual under valuations on these invoices; (5) the amount in dollars of the actual loss to the Treasury by the under valuations; and (6) the total amount in dollars of the invoices which were liable under the moiety system to seizure and confiscation on account of these under valuations:

Dates and ships.	Boxes Tin Plates.	Amount of invoice confiscated in dollars.	Amount actually under valuation in dollars.	Actual loss to the Treasury in dollars.	Total amount of invoice liable to seizure in dollars.
1871.					
May 8.					
Abyss.	4	\$487 50	\$27 50	\$6 87½	\$33,509 37
Do.	4	53 75	3 75	99	
Do.	14	410 27	25 27	6 31¼	
May 10.					
C. Bk. Yr.	16	269 50	12 00	3 00	\$22,783 93
May 22.					
C. N. Y.	209	497 75	52 25	13 06¼	\$32,529 87
May 30.					
C. Lond.	90	1,375 81	35 31	8 32	\$18,035 25
Do.	50	287 00	12 50	3 12½	
Do.	105	1,248 75	57 00	14 25	
Do.	160	800 00	20 00	5 00	
Total.....		\$5,530 33	\$245 58	\$61 44	\$107,749 42

It thus distinctly appears that the total amount of the four shipments was \$107,749 42; that on this amount there were under valuations to the extent of \$245 58, and a consequent loss of duties to the government of \$61 44; that the amount actually confiscated to the United States for this delinquency was \$5,530 33, of which \$2,265 16½ was put by Harvey (the treacherous clerk and spy), Jayne (the harpy), and the collector, naval officer and surveyor of this port, into their own pockets; and, finally, that the sum liable to confiscation for the delinquency was the entire \$107,748 42, for which whole amount, according to the evidence given to the Committee of Ways and Means, a suit was advised by Senator Conkling. Therefore, under the moiety system, which Butler defends, and if an opportunity shall arise will seek to reëstablish, the penalty actually extorted for the under valuation was more than ninety fold, while the penalty which, under the letter of the law, might have been extorted, was more than nine hundred fold. The precise figures are as follows: For every \$1 of under valuation \$90 1073-6144 were extorted, and \$985 2292-6144 might lawfully have been extorted. Putting aside the whole question of "conscious" under valuation (as to which, however, on these facts there can be but one opinion among disinterested men), was the exaction which was inflicted a reasonable one—one worthy of a just and humane government? And was not the exaction which the law would have allowed, and for which a Senator of the United States advised that suit should be brought, ten times more unreasonable? Need we make further comment?



[From the PHILADELPHIA EVENING BULLETIN,  
June 27th.]

The savage attack made on Phelps, Dodge & Co., of New York, by Gen. Butler last week in the House of Representatives, has provoked a reply from that much abused firm. It will be remembered that Gen. Butler, while sneering at the religious pretensions of Mr. Dodge, made the following charges against him and his partners: That the firm imported metals in the shape of statues to avoid the duties, and that Mr. Dodge induced the Treasury Department to transpose a comma in the tariff act of April, 1874, by which he cleared two and a quarter million dollars. In our comments upon Mr. Butler's speech we declared that these accusations were unworthy of belief unless they should be sustained by some better evidence than the naked assertion of Mr. Butler. This want of faith in the veracity of that gentleman is now shown to have been well founded, for, of course, there can be no question as to which we shall believe when conflicting statements are made by two such men as Wm. E. Dodge and Benjamin F. Butler. The reply of Phelps, Dodge & Co. shows that the importations of metal statuary were made before the present firm existed, and before any of the present or former members of the firm were engaged in the business. The transposition of the comma was made, not in the Act of April, 1864, but in that of June, 1864, and it was made by Secretary Fessenden, as honest a man as ever lived, because he, as a member of the Senate at the time of the passage of the bill, perceived that the sense of the measure had been changed by a copying clerk. Moreover, the law, as it stood after the correction was made, was not in favor of the firm, who would have realized more under the first interpretation than under the reformed law.

This statement of facts will certainly be copied all over the country, and it will be likely to neutralize the effect of Mr. Butler's speech. Even the smartness of that effort will not atone for the wanton misrepresentation with which it is filled; and the author will find that in his attempt to bolster up his reputation by an apology for Jayne and Sanborn, and a ferocious onslaught upon a respectable mercantile house, not even the most cunning and dexterous use of falsehood will suffice to attain his object. He is beaten by a plain utterance of truth, which is once again more than a match for elaborate misrepresentation.

[From the SYRACUSE (N. Y.) JOURNAL.]

Nobody but Ben Butler would have had the temerity to make a wanton assault upon a

man of such high character as William E. Dodge is known to be, like that which Butler made upon Mr. Dodge during the closing hours of the late session of Congress. Nobody else would have been so lost to a sense of common decency as to traduce one of the most valued philanthropists of the times, and to sneer at his Christian virtues. But "Old Cockeye" was just the man for that kind of work, and in performing it he evinced no more conscientious regard for what he could not but have known was the truth, than a rhinoceros would have shown if it had been admitted to the floor of the House of Representatives, and been allowed to flounder around as he pleased. He evaded every opportunity which was given him to speak when the Sanborn business was properly before the House for discussion; and waited until the last hours of the session, when there could be neither time nor opportunity to answer his misrepresentations, and then he ejected his villifications upon the audience which had assembled to listen to him, knowing that what he said would be published by the telegraph and a regiment of reporters, from one end of the land to the other.

But Butler having had his "say," Messrs. Phelps, Dodge & Company now have theirs. The card to their "friends and the public" is a direct reply to the allegations which were made by Butler in his despicable speech.

The statements made by this firm are verified by other facts that are well known in business circles, and by facts that were brought out when the Sanborn and Jayne business was before Congress. That Butler absolutely disregarded those facts and assailed the personal honor and integrity of William E. Dodge, with the basest and at the same time the most audacious misrepresentations, is another indication that he is as regardless of a sense of truth as he is reckless of a sense of fear. He is a dangerous man, just as all brute force is dangerous when coupled with an intellect in which the moral faculties are largely deficient. But the American people have placed a true estimate upon him, and the conclusion is justified by existing circumstances that Butler has at last reached the end of his tether.

#### A LIBEL ANSWERED.

[From the BOSTON ADVERTISER.]

The firm of Phelps, Dodge & Co. have felt obliged to reply to the dastardly attack made upon them by General Butler in his speech near the close of the session. The charges are taken up *seriatim* and are conclusively



answered. Nothing can be added to the replies to the second and third charges, and very little to the first—touching the importation of lead in the form of statuary, free of duty, to be melted down as soon as received by importers. The official record of Congress gives a certain color to the accusation. In the *Globe* for the session of March 1, 1865 (38th Congress, 2d session, vol. 2, p. 1,255), the tariff bill being under discussion in the house, in committee, a section was read restricting the term "statuary," then on the free list, to "professional productions of a statuary or of a sculptor only." Mr. Kernan inquired what this meant. Mr. Morrill, of Vermont, then a member of the house, explained how metals had been imported cast in images, so as to evade duties. Then occurs this passage:

Mr. ELDRIDGE.—I should like to know from the gentleman from Vermont whether this does not refer to one particular firm. I want to know if it does not refer to Phelps, Dodge & Co., and to that firm alone?

Mr. STEVENS.—When statuary was admitted free we had statues of Webster and Clay and others in copper and lead, imported, and so soon as they were landed and taken out of the custom house they were melted down. It was a fraud upon the revenue.

Mr. ELDRIDGE.—What firm did that?

Mr. STEVENS.—Phelps, Dodge & Co.

This charge was fully explained at the time, but the record, having been printed, was unalterable. The facts, as stated then and often repeated since, were that the offence charged upon Phelps, Dodge & Co. was committed by an earlier firm of Phelps & Peck, whose successor, the present firm, was formed between the time of the offence and the date of the above quoted debate, Mr. Phelps alone remaining of the former house. Since then Mr. Phelps has died, and, though his name is still used, Mr. Dodge is the head of the firm. [As before shown, the charge even against the firm of Phelps & Peck was without foundation.—Ed.] These facts were perfectly well known to Gen. Butler, whose only apology for repeating the falsehood is that he did not invent it. So in the next generation some knave in Congress, who may have a grudge against the successors to the present firm of Phelps, Dodge & Co., will go to Butler's speech in the *Record* for charges against them. For a slander once rooted is there forever.

[From the BOSTON JOURNAL OF COMMERCE, June 27th.]

Butler fairly outdid his previous efforts in mud throwing in his speech on the Sanborn

and Jayne matter. His connection with those two legalized government leeches on the merchants has been disgraceful, but not more so than his efforts on the floor of Congress to blacken the hitherto untarnished reputation of the largest metal importing house in the country. Had Mr. Butler not shared the Jayne and Sanborn spoils, the nation might calmly listen to his endorsement of the system, but, as it is, Mr. Butler would have done better to have said nothing on the subject, for the impression made by such an interested champion could not fail to be bad, even had he made a most discreet, eloquent and effective speech instead of the one made.

#### MR. BOUTWELL ON PHELPS, DODGE & CO.

[From the TROY WING, June 27th.]

We have always been disposed to give Secretary Boutwell credit for honesty and common sense. But his vindication of himself and the administration in the transaction by which a respectable and honest firm was swindled out of \$270,000, is so weak and foolish that we begin to doubt his honesty. It was well known to Mr. Boutwell and to all the Custom House officials, that this firm, in order to cover any possible deficiency in the valuation of their importations, had many times voluntarily added to the invoice value, and paid an excess of duties, and yet he affects to believe that there was some mystery about a few small vouchers which had escaped everybody's notice but the prying eyes of a dishonest clerk. It was evident to Jayne, and must have been plain to Mr. Boutwell, that the leaves torn from the books of the company were stolen. Whoever brought them to Jayne, he must have been either a thief or an accomplice of the thief. Mr. Boutwell thinks it honorable in the Government to accept and use stolen evidence. We think the administration that would use stolen goods is a party to the felony. Mr. Boutwell thinks the law was mercifully administered. We think it was an unconstitutional law unmercifully administered. Mr. Boutwell was afraid to do right in this case and in others. He looked calmly on and let a pack of spies, thieves and swindlers, some in and some out of office, harry the merchants and plunder them and the Treasury under a law that he says was a bad one, and yet he casts his vote for the very worst section in it, and most dangerous, because it is a violation of private rights.

[From HARPER'S WEEKLY, July 11th, 1874.]

Probably very few persons who read the speech of General Butler against the house of Phelps, Dodge & Co. believed that his statements were correct, or doubted that it was an ingenious special plea of an "Old Bailey" advocate. It was the final desperate effort of the apologist of the gross iniquities of the Sanborn and moiety affairs to discredit the house through whose persecution the infamies of the whole system were exposed, and the position of General Butler has been distinctly revealed. But although the assailant was utterly and ludicrously discomfited in the House, Messrs. Phelps, Dodge & Co. have not chosen to allow his deliberate misrepresentations in regard to their house to pass unexposed, and have conclusively replied to his charges.

The reply of the firm was not necessary to the vindication of a mercantile reputation which, since the facts have been known, is seen to have been wholly unstained, but it completes the exposure of the utter recklessness of General Butler's statements.

[From the N. Y. INDEPENDENT, July 2d, 1874.]

We publish in another column the statement of Phelps, Dodge & Co. in regard to the malignant attack upon that firm by General Butler just at the close of the session of Congress, and after the Anti-Moiety Bill had been passed by both houses. The statement completely vindicates the firm, and seems to show General Butler to be either an ignoramus (which he is not) or a vile slanderer. As to the statutory business, whatever truth or falsehood there may be in this story, it can have no application to this firm or to the members thereof, since the firm was not in existence at the time of the alleged transactions. As to the "comma" fraud upon the revenue, the statement shows that the comma, in engrossing the bill, was added by mistake; that as thus added it made the law absurd; and that Secretary Fessenden, who was a member of the Senate when the bill was passed, and also chairman of the conference committee that reported the bill, remembering that the very point in question was discussed by the committee, ordered the bill to be constructed, as was intended at the time of its passage. As to the charge of frauds by false invoices consciously and continuously perpetrated by this firm, it is not too much to say that this is simply wholesale lying, without evidence to support it, as malignant as it is reckless in its character, and, if the author was not shielded by the immu-

nity for words spoken in debate which the Constitution gives to a member of Congress, rendering him liable to punishment. The result is just what we presumed it would be when we last week called the attention of Phelps, Dodge & Co. to the allegations of General Butler. We invite our readers carefully to peruse the statement, which they will find in another column.

[From the PRESBYTERIAN, July 4th, 1874.]

We direct the attention of our readers to the statement of Phelps, Dodge & Co., New York, to be found on the second page of the advertising sheet of this week's *Presbyterian*. This well known house pleads earnestly for its good name, and we do not wonder at the earnestness shown. A well established reputation is not a thing to be sacrificed easily, and mercantile honor is to a true merchant above all price. Mr. William E. Dodge, the senior partner in this firm, is well known in the Presbyterian Church, and it will be a difficult thing to convince men that he has been a party to the constant violation of the law of the land, or that he has ever consented to fraud upon the Government which he has upheld by purse and speech, or that he has sacrificed a "good conscience before God and man."

#### MOIETY'S LAST GASP.

[From the N. Y. FINANCIAL CHRONICLE, July 4th, 1874.]

It is a well known truism that neither the law nor its executor finds any favor in the eye of the offender. Hence, very little wonder has been felt at that closing parting gasp of the Massachusetts statesman against the moiety reform and Mr. Dodge, the chief victim of the defunct system. It was an unpardonable offence for the members of that firm to show any sign of not liking to be robbed of two hundred and fifty thousand dollars: worse still was it to become chief witness against the law and against those sucking doves that fatted off it. And although it sounds a little boyish and puerile for a full grown Congressman to brand the whole race of God fearing men as impostors and hypocrites, because, forsooth, this firm did not turn the other cheek, or give those Government spies and their abettors their shirts when they took from them their coats, still the public can forgive the learned Congressman's weakness and worse taste while they are rejoicing in the blessed results obtained.

We notice that Messrs. Phelps, Dodge & Co. have seen fit to answer some of the charges which welled up out of this pure minded Massachusetts statesman's breast; it was cruel and uncharitable of them thus to expose him further, for they leave him in a very pitiable condition. But it gives him an occasion to repeat his beautifully classic idea that all merchants are liars and all Christians are cheats, so to him there will be some compensation; and we shall expect to see at the next session of Congress a few more squirmings and contortions of these wounded but only half dead victims of this repeal, whose only desire is to reenact a measure on which they have so long feasted and fattened.

They will fail, however. The country feels a wonderful relief in being rid of that whole system, and it will never knowingly return to it or anything similar.

Yet this work, according to our idea, is not completed. The repeal has been accomplished by the personal exertions of a few men. We are under great obligations to them. The extremely able argument of Mr. Schultz, the clear, convincing evidence of Mr. Dodge, besides the efforts and evidence of many others, have removed this modern inquisition. But the matter should not be left thus. The Massachusetts statesman writes under this repeal; let us have a committee appointed by the next Congress to inquire into and discover, if possible, what it is in this repeal that is pinching him so, and all the other chief participators in this fraud, let us have them up and find out where the money went, and, wherever the law was exceeded, make them pay it back. This is all possible; it only requires the continuance of the persistency and wisdom hitherto used in this investigation. Great good may be thus accomplished, and the recurrence of such evil practices—even if a bad law should, by fair means or foul, be again placed upon our statute books—will become impossible.

Finally, if it is the verdict of the people that this statute was a bad one, and that it was oppressively and wickedly executed, we think there can be no doubt but that the Government should at least return its portion of the plunder to those to whom it rightly belongs. No public good can be served by retaining two hundred and fifty thousand dollars, or half that sum, because there are deficits of about fifteen hundred dollars in duty payments out of an importation covering forty millions of dollars. Besides, there are some very hard cases where the fines imposed, without any intentional fault on the part of

the person fined, have resulted in financial ruin. All those wrongs should be righted, and we trust that our merchants will not suffer the matter to be quieted, but with the meeting of Congress will again be prepared to pursue it until the right of an officer to rob the citizen under color of law is negatived forever.

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[From the N. Y. FINANCIER, June 27th, 1874.]

Thus the unworthy animal, Jayne, retires into private life with contempt and a fortune, and the Government of the United States retires from its partnership with him and his gang of robbers and spies on the usual thieves' basis of dividing plunder. The new law is not in all respects what it should be, but it marks a reform, one whose importance is not likely to be immediately appreciated except by those who have either worked for it or have been made victims of the oppression at which it was directed. That oppression did hard, as all oppressions do which not only gratify the love of power but have money in them; the Custom House has been for many years becoming more and more the source of money supplies and office rewards for party campaigns, and it resigned this Star Chamber with manifest reluctance. Senator Howe discovered nothing here two years ago except a few spots, which needed some touches of investigation whitewash, and he wants to know what is the matter with Jayne, of whom we had heard nothing. Senator Conkling was too acute to openly oppose the bill, but he indirectly labored against it, yet it was too seriously demanded, and there was no resisting public opinion, even in the Senate.

This reform is one thing which Mr. Dodge's \$271,000 went towards procuring; it is only just to say, however, that no small share of the credit belongs to Mr. Schultz, who gave—what merchants are too unwilling to give, as compared with gifts of money—active personal services. This Tweedism in national administration, which corrupted politics from White House to caucus, and debauched public morals by exhibiting, on a large scale and in the open light of day, with all the prestige which governmental operations carry, the possible rewards of informing, as compared with the slow ones of honest industry, is brought to an end for the present. That it is quite extinct would be too much to say, for the liberty now nearly regained was not all lost in a year, and a vigilant and firm public opinion alone will retain the position permanently. Looking back, and comparing the

new law with the old practices, it does seem incredible that such outrages as belong to a recognized tyrannical Government have actually been permitted here in this country and metropolis. But we congratulate the whole nation on this result.

### THE MOIETIES REPEAL.

[From the N. Y. WORLD, June 24th, 1874.]

The moieties repeal bill, abolishing arbitrary seizures of books and papers, having survived all attempts of prominent Republicans in the Senate to smother it, and having finally become law, the question naturally arises why the law authorizing such seizures was still retained upon the statute book after the oppression which it inflicted upon merchants and the corruption which it bred among Custom House agents were so thoroughly exposed by Senators Bayard and Casserly two years ago. The answer to this question is to be found partly in the combined ignorance and indifference of the mass of Republican legislators concerning all questions not of a purely partisan character, but mainly in the rich revenues produced by moieties, not only for Congressional attorneys of the Custom House but for Republican election funds. The repeal of the law now is the ultimate outcome of an accident which, however painful and expensive it may have been to the parties directly concerned, has nevertheless proved a lucky one for the mercantile community of this city, and, indeed, for honest merchants throughout the country. The Custom House investigation of 1871-72 revealed some unusually ugly scandals, which all the whitewash wherewith the Custom House was coated by Buckingham, Howe, Pratt and Stewart could not hide out of sight. The Democratic Senators, Bayard and Casserly, were more than a match for the Republican majority of the Investigating Committee. In fact, they produced testimony which completely peeled off the whitewash so assiduously laid on by the majority, and tore away the covering from the slimy tracks which led from Lee's general order stores to the White House at Washington.

The most damaging testimony given before the Investigation Committee in 1871-72, against the New York Custom House, was by Mr. William E. Dodge, and appears in the minority report of Messrs. Bayard and Casserly, as follows:

Q. Do you think that the present system tends to induce fraud and corruption in the employes? A. I do; I have no hesitation in saying so.

Q. Have you good reason to believe that there

are fraudulent transactions generally in the collection of the revenues here? A. I am not sufficiently informed to give an opinion; I have no hesitation in saying this: that from the standard of character in the Custom House. I would not take the average employes into my store under any consideration, or trust them with my business at all.

Q. By character, do you mean business or moral character? A. I mean moral character and business qualifications—both.

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Q. How does the present system of appointment to Custom House places affect the commercial interests of New York and the country? A. My impression is, if character and qualifications were the standard of employes in the Custom House, that two thirds of the number now paid by the Government would do all the business better than it is done now.

Q. And as to expense? A. Equally as cheap. It cannot fail to be a charge on the commerce of New York to have its Custom House an hospital for broken down politicians. That is just what it is. There is no use in talking about it; that is just what it is. There are men there—hundreds of them—that I would not allow to come in my office if they would come for nothing. I would not trust them in my store to have anything to do with my goods. They are broken down politicians, skilled only in political manipulations. For rapidity and correctness in performing the business, and the intricate calculations necessary in the Custom House, a man should learn and understand it, and get the facilities. In our house we train men for particular branches of business, and have clerks who have been at the same desk for twenty and thirty years. A man who has been in the Custom House for ten years knows how to do the business, where to find the necessary papers, etc. In his place there comes a stupid, drunken, broken down, swearing fellow, whom you have to tell how to do his business and show where to find the papers, etc.—*Report of 1871, pp. 45, 46, 47.*

This is plain talk, and it clears up a mystery. Mr. Dodge and his firm, like a great many other bold witnesses, were duly put in the *disgrace book*, and when a year later the spy, Harvey, trumped up the charges against the firm, the gratuitous evidence giver's offences were sorely remembered. We know the full result of this miserable business. Never before was such a penalty exacted from any firm, either in the western or eastern hemisphere, for such trifling, paltry delinquencies, if at all. The moiety people and their advocates were under the impression that, inasmuch as Phelps, Dodge & Co. had been "squeezed," they would be content to keep quiet. But the firm, although mulcted in the sum of \$271,000 without fineeing, refused to be considered dishonest by the public, and it is owing to them and their continual explanations that the mercantile community was finally and thoroughly aroused, and the matter not only of Phelps, Dodge & Co., but of other firms, brought before the Ways and Means Committee. The mere accident of squeezing Phelps, Dodge & Co. was the actual means of breaking up the outrageous laws of 1863 and 1867. But however



much the House of Representatives was inclined to aid in the good work, the Senate, with Mr. Conkling as its leader, was by no means favorably disposed towards the Anti-Moieties Bill. Nor were the whitewashers—Buckingham, Howe, Pratt and Stewart—willing to call a spade a spade in 1874, which they had styled a rose cultivator in 1871-72. But fortunately there was a Democrat in the Senate whose iron will and indomitable tact and energy overcame all difficulties. Senator Bayard was determined to break this great scandal up. He first secured his followers, where it was natural that he should first seek them, in the Democratic ranks, and then appealed to the more fair and liberal Republican Senators, of whom none deserve greater praise than Senator Wadleigh, of New Hampshire, Senator Alcorn, of Mississippi, and some of the silent Senators but certain voters, such as Lewis, Tipton and Washburn. It was by the able leadership of Senator Bayard and the unflinching patience of his followers that this arduous fight was won in the Senate.

The general results of this victory are as yet but faintly realized by Democrats, and least of all by Democrats in their capacity of free traders. In the first place it breaks up a very lucrative electioneering fund, which was a standing danger to the country; and secondly, it introduces the small end of the wedge for the splitting up of the high

tariff system. It has been proven fully and substantially, that midnight seizures and a brigade of spies cannot stop smuggling and under valuation as long as a high tariff system exists. The only method of giving the death blow to extensive under valuation lies in reducing the tariff to such an extent as to make smuggling unprofitable. Extensive under valuations cannot be made without collusion, and this costs money. Those conversant with the mysteries of this dark art affirm that smuggling costs from 8 per cent. to 10 per cent. of the value of the smuggled goods. This pays well enough when the duty is 60 or 90 per cent., but it is obvious that if the duty is reduced to a basis of 15 or 20 per cent. the under valuations made by collusion, and costing from 8 to 10 per cent., will be found an unprofitable business. It is obvious that all honest advocates of a fair tariff have gained the outposts of a fortress that will be assailed and carried in the Forty-fourth Congress, when a Democratic House will have a Democratic chairman on the Ways and Means Committee.

As to Butler's tirade, however effective it may prove in giving notoriety to the scandalous defects of the present tariff system, that was merely a hooting and yelling raised after the real battle had been fought and won under Democratic leadership. Moreover, Butler's blunders of statement are monstrous, as we shall show another day.



SUMMARY OF ALL THE PROCEEDINGS  
IN THE CASE OF  
PHELPS, DODGE & CO.  
BY  
HON. DAVID A. WELLS,

*Late Commissioner of the Treasury.*

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ALTHOUGH there was, probably, not a newspaper throughout the whole length and breadth of the United States which did not, during the years 1873 and 1874, discuss repeatedly, and to a greater or less extent, the case of Phelps, Dodge & Co., and the relations of this firm with the Federal Government, yet there was not at any time during this whole discussion anything like a full, clear and connected history of the exceedingly curious transactions under consideration ever brought before the public. The time has now, however, arrived, when such a statement can be made; and although not in any degree needed for the vindication of the firm, whose entire and honorable acquittal of all the charges brought against them was, after full investigation and discussion, substantially embraced in the repeal, by a nearly unanimous vote of both Houses of Congress, of the so-called "moiety" and "seizure" laws of the Customs, as they existed in 1873, and under which the proceedings in question against the firm were instituted, yet the importance of a succinct and popular narration of the principal involved circumstances, considered either as a contribution to the political history of the "times," and to the cause of economic science generally, cannot well be over estimated.

To premise, the firm of Phelps, Dodge & Co. is one of the oldest in the United States, and in the magnitude of its special business—dealers in metals—perhaps without an equal in the commercial world. During the whole period, moreover, of its long history—extending now over three generations—the character of this great house for enterprise, probity and liberality, had come to be regarded by nearly all that portion of the American people conversant with commercial affairs, as somewhat in the light of a standard, with which comparisons might be instituted, but which, in the experience of actual every day life, it would be exceedingly difficult to surpass, or indeed to find an even and exact parallel. In short, it is no exaggeration to say that no firm in the United States, acting either collectively or through its individual members, has endeavored more continuously and practically to carry out the principle that abundant means and large opportunities for influence were in the nature of trusts, to be administered for the benefit of humanity, rather than for the promotion of

strictly personal interests ; or which, in accordance with such a principle, has linked its name, by so many substantial tokens, to so many religious, educational, patriotic, industrial, or commercial enterprises. And yet, this was the firm and these were the men against whom, in the year 1873, the whole power of the Federal Government and no small share of public opinion, seem for a time to be actively enlisted for the twofold purpose of crushing and dishonoring.

The remote inception of this affair can, undoubtedly, be traced back as far as the year 1871, when Mr. William E. Dodge, senior, then President of the New York Chamber of Commerce, went, on invitation, before a joint select Committee of Congress and gave testimony very disparaging to the manner in which the business of the New York Custom House was administered.\* This testimony was the occasion of much offence, at the time, to

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\*The following is substantially that portion of the testimony of Mr. Dodge, given before the Congressional Committee, which was regarded by the Federal officials connected with the Custom House as particularly damaging and offensive :

*Committee.*—Q. Do you think that the present system tends to induce fraud and corruption in the employés ? *Mr. Dodge.*—A. I do ; I have no hesitation in saying so.

Q. Have you good reason to believe that there are fraudulent transactions generally in the collection of the revenues here ? A. I am not sufficiently informed to give an opinion ; I have no hesitation in saying this : that, from the standard of character in the Custom House, I would not take the average employés into my store, under any consideration, or trust them with my business at all.

Q. By character do you mean business or moral character ? A. I mean moral character and business qualifications, both.

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Q. How does the present system of appointment to Custom House places affect the commercial interests of New York and the country ? A. My impression is, that if character and qualifications were the standard of employés in the Custom House, that two thirds of the number now paid by the Government would do all the business better than it is done now.

Q. And as to expense ? A. Equally as cheap. It cannot fail to be a charge on the commerce of New York to have its Custom House a hospital for broken down politicians. That is just what it is. There is no use in talking about it ; that is just what it is. There are men there—hundreds of them—that I would not allow to come in my office if they would come for nothing. I would not trust them in my store to have anything to do with my goods. They are broken down politicians, skilled only in political manipulations. For rapidity and correctness in performing the business, and the intricate calculations necessary in the Custom House, a man should learn and understand it, and get the facilities. In our house we train men for particular branches of business, and have clerks who have been at the same desk for twenty and thirty years. A man who has been in the Custom House for ten years knows how to do the business, where to find the necessary papers, etc. In his place there comes a stupid, drunken, broken down, swearing fellow, whom you have to tell how to do his business, and show where to find the papers, etc.—*Report of 1871, pp. 45, 46,*

certain parties, who conceived that their official conduct was thereby publicly criticized; and subsequently the original offence was further deepened and aggravated by the reading, in the course of a debate in the Senate of the United States (3d Session, 41st Congress, 1870-71), of an extract from a private letter, written by Mr. W. E. Dodge, Jr., in answer to inquiries put to him by a senator, touching the necessity of reform in the same special department of the Civil Service of the Government. The extract from the letter thus referred to reads as follows:

There are three classes of clerks in the New York Custom House on whom devolve its working.

*First.*—The fewest possible number of older clerks, kept as experts, from the sheer necessity of having some experienced hands to attempt the guidance of official routine. These poor fellows are kept in a constant state of terror, never able to make any plans for the future of themselves or their families; never knowing when their instant dismissal may come. They are obliged to consort and drink with the political hacks placed in their bureau; contribute from their small income to election frauds, with no hope of advancement, no stimulus to more faithful work, no provision in case of illness or old age. They fear to communicate their knowledge of details, knowing the moment it is learned by others they will lose their own place. They are obliged to invent more and more intricate means of conducting business in order to throw a mystery about their work and preserve their own importance. They are a sad, unhappy set, with no pride or ambition.

*Secondly.*—A small class composed of incapables and shiftless persons, who have never succeeded in anything, and never will, and who have some family or personal hold on people of large political influence. These are pushed into the customs as into a hospital or safe harbor. They do very little work, and are not expected to do anything but to draw their pay with exact and beautiful regularity, to act as figure heads at Ward primary meetings, and, in a feeble and helpless way, to cheer on the fortunes of the particular senator to whose skirts their friends happen to hang.

*Thirdly.*—The large class forming the great bulk of the clerks, filling to repletion all the old departments, and for whom new departments are made; this class, in order to give positions to which political jugglers rack their ingenuity to make places, invent all sorts of intricacies to turn simple business forms into problems which ordinary minds cannot understand, so that some who have done the party service can have a desk at which entries can be rechecked and examined again and again in hopeless confusion. These are the men who have been the sly workers in local caucuses, the noisy men in local elections, who have worked and drank for years, who have a "hold" upon some higher officeholder, or Congress man or Senator, and must be provided for. For this reward of their faithful services they have looked forward for a long weary time, and they must make the most of it. They cannot expect to stay long in their offices, and their duty to themselves and their families, as they see duty, compels them to make the most they can. The slightest fitness for the post or adaptedness to the work is not thought of for a moment. The slightest fitness for the post or adaptedness to the work is not thought of for a moment. They do as little work and get the most they can, and yet they are not happy. Each clerk represents a dozen but equally deserving but disappointed political workers who had tried for the same place, and are constantly plotting to undermine him. In old times a man had a fair chance to hold through the Administration, but now his tenure is only good until the "friends" of the "other Senator" get the upper hand. The chaos and confusion growing out of such working materials can be easily understood, especially when you add the fact that the collector is

expected to use most of his time in political manœuvring, and the tariff under which they act is now, with the various rulings under it, the most complicated ever known, and the system of drawbacks intricate beyond description.

Can you wonder that the voters of the Republican party, who are for the most part among the thoughtful and intelligent people, lose their confidence in an administration which, in a time of debt and depression, allows the most vital points of its financial machinery to be used for the gain and for the squabbles of low politicians, who in any other sphere would not be trusted a moment."—*Appendix to the Globe, part 3d—3d Session 41st Congress, 1870-71, p. 56.*

The warrant for the hypothesis that the testimony thus given by Messrs. William E. Dodge, senior and junior, to members of the Congressional Investigating Committee, in 1870-71, had more or less of connection with and bearing upon the proceedings subsequently instituted against the firm of Phelps, Dodge & Co. by the same Custom House officials whose conduct was criticised, is to be found in the circumstance that threats were openly and repeatedly made at the time by persons connected with the Government against the firm for the course which they had taken; and that the members of the firm were also repeatedly warned by friends occupying positions affording opportunities for obtaining information, that punishment would be inflicted in retaliation, against their House, for the testimony of its members, in case a favorable opportunity for so doing should be afforded. In answer to an inquiry on this subject, a member of the Custom House Investigating Committee, on the part of the Senate of the United States in 1870-71, who was, perhaps, more conversant with the whole business at the time than any other member of Congress, also writes, under date of February 20th, 1875, as follows:

"This letter (the one of W. E. Dodge, Jr., referred to) and the testimony of Mr. Dodge, I cannot doubt, have been the cause of his subsequent troubles.

"The same men (whose official conduct was criticised in the testimony and letter) set spies upon them, and took advantage of acts of which they were ignorant and innocent to compass their revenge. In addition to this, they furnished an opportunity to strike at the integrity of professedly Christian merchants. How could such an opportunity be lost? What right has a Christian to enterprise or thrift?"

Whether the views thus expressed are in all respects warranted may be a question. The presumptions are, however, all in favor of their correctness; but whether they are or are not warranted, the opportunity for retaliation and persecution, to those who undoubtedly desired it, even if they did not actively seek it, soon presented itself; and the method of its origination and the incidents of romance and reality connected with its working up and development, constitute a chapter alike in real life and

mercantile history for which it would be most difficult to find a parallel. What constituted this opportunity, and what were these incidents, it is next in the order of this narrative to relate.

As already remarked, the business transactions in metals of the firm of Phelps, Dodge & Co. are of great magnitude. It should also be added, that these transactions are not confined to the territorial limits of the United States. And it accordingly happened that during the early summer of 1872 negotiations were commenced by the firm with certain large manufacturers in Russia for the purchase, for a term of years, of the entire annual product of a specialty of metal fabrication. As the project, furthermore, from the amount of capital and liability involved, was one of no little risk and of great importance, the entire discussions and correspondence relative to it were made in the highest degree confidential, and, at the proper time, a member of the firm was sent to Europe in order to perfect and complete the arrangements. But the steamer which bore him had hardly taken its departure when the firm was waited upon by a competitor in business, who, after making known his acquaintance with the proposed contract and its conditions, as well as the sailing of the partner referred to, preferred a demand for participation for himself and others in the enterprise, accompanying it at the same time with a threat that, unless the terms were accepted, "he would burst the whole business." It is only necessary to say that the demand was at once resented, and its author treated as he deserved. But the revelation that what were supposed to be business secrets in the firm had become known, and the further fact that an attempt was subsequently made in Europe to make good the threat uttered, led to an investigation, when it was ascertained that for some time previous it had been the practice of certain *reputed* respectable New York metal brokers and merchants to visit the store of Phelps, Dodge & Co. secretly, and at night, for the purpose of inspecting their letter books and invoices, using this information in their own business, and communicating it to others in the same trade. This arrangement was effected and carried out by the direct bribery and purchase of certain dishonest clerks and watchmen, who, in the first instance, acting in accordance with instructions received from the outside parties, kept back and secreted the books, which, at the close of each day's business, it was their duty to deposit and lock up in the safes; and, secondly, at a late hour of the night, when all the partners and the honest clerks had retired to their homes, unlocked the doors of the store and the counting rooms, and gave free admission to their co-conspirators to the premises.

An arrest and prosecution of at least one of the principals concerned in these disgraceful transactions immediately followed. On the trial the



guilt was fully proved, but the jury disagreed as to whether the crime was burglary or larceny. But in the course of the trial it came to light that among the employés who had been guilty, from mercenary motives, of betraying the trust confided to them, was a clerk who, to the sin of dishonesty, added the deeper one of ingratitude. This man, a creole Frenchman or Spaniard, of supposed West India origin, had been given employment in the outset, when not needed, by a member of the firm, simply out of compassion for his utter poverty and friendliness—and had subsequently been educated, promoted on a liberal salary to the position of assistant invoice clerk, and even retained in position when ill health had almost entirely incapacitated him from any useful and efficient service. This rascal—for such is the only proper term that can be applied to him; who, by the way, it should be stated had gained admission to the store at night under the plea of serving his employers by bringing up his arrears of copying—foreseeing as the result of the legal investigation that his own dismissal from employment would be one certain issue, took immediate steps to secure himself against any contingent detriment by assuming the rôle of an informer; and having, in his capacity as assistant clerk, become acquainted with certain invoice irregularities, in place, as was his duty, of informing his employers, stole the documents in question and put himself in communication with the Custom House officials.

As to the manner in which he operated to make his stolen capital available, it is sufficient to say that men of high standing in the legal profession were only too ready to engage, for a share in the spoils, in the work of hunting down an old and leading firm of New York merchants, and by such the case was worked up and placed in the hands of the Custom House detectives.

Such, then, is a succinct history of the events that preceded the initiation of proceedings on the part of the Government of the United States, through its agents, against the firm of Phelps, Dodge & Co., for alleged violations of the laws for the assessment and collection of the customs revenues; and although the events in question have become matters of the past, and in the whirl and rush of busy life have already become almost forgotten, yet it is worth while to here renewedly bring them before the public, and in the same connection to put this question—How long a community which tolerates such a dry rot of all manliness as is involved in the above record, and kindly allows the mantle of oblivion to fall on the actors in such contemptible transactions, can legitimately profess to be moral, or even civilized? Or, in the face of such precedents, what probability is there of New York City speedily becoming the commercial centre of the world's exchanges, the continued recipient of foreign capital, or an *entrepôt* of the commerce of all nations?

The foundations of the case having been thus laid, it might naturally have been presumed that the Government, in taking charge of future proceedings, would, on account of the magnitude of the issues involved, have, before making public accusation, at least afforded through the collector, as chief revenue official of the port, reasonable opportunity for the parties suspected to know whereof they were charged, and to present in private any explanation which they might have to offer ; and this more especially when it might have been remembered that the firm about to be arraigned had, through its long business existence, paid into the Federal Treasury, on account of customs duties, a sum in excess of fifty million of dollars, without any previous offence, controversy or pretence of irregularity, and without so much as a shadow of an imputation on its integrity. Such, however, was not the course followed ; but, on the contrary, every possible precaution was taken to prevent any information coming to the firm in respect to the proceedings contemplated against them, until the proper time having arrived, they were summoned, not to the office of the Collector, but, to use the language of Mr. Dodge, senior, before the Committee of Ways and Means, "to a little dark hole, lighted by gas," in the basement of the Custom House, and there confronted with the chief of the detective service, whose portrait and customary surroundings were thus graphically described by Hon. James B. Beck, of Kentucky, in his speech on this subject before the House of Representatives :

"This picture, Mr. Speaker, needs no filling up. It stands out on the canvas. The detective toying with handcuffs, putting them on his own wrists, to let the doomed man see how they worked; telling his victim what a wicked fellow he had been; holding up to him the terrors of the law; changing his tactics according to the subjects with which he had to deal; urging frank confession as the safest and best course, furnishes such a portrait of the prostitution of every principle of justice and law that it disgusts a man to think of the scene."

The summons to the place described having been responded to, the head detective, Mr. Jayne, whose portrait and usual method of proceeding have been above depicted by Mr. Beck, opened the case by informing the representatives of the firm (Mr. Dodge, then President of the N. Y. Chamber of Commerce, and Mr. James) that they and their associates had been for years engaged in deliberate attempts to defraud the revenues ; that they had systematically committed perjury, and had repeatedly made use of false and fraudulent invoices, and that the penalty for each of the offences specified, which involved perjury, was two years' imprisonment, a fine of five thousand dollars, and a forfeiture of all the merchandise thus irregularly imported. And although Mr. Jayne declared that the Government

had full evidence to sustain all that he had charged, he nevertheless concluded by demanding of the firm that they should surrender unreservedly their private books and papers, and, at the same time, exhibiting a warrant obtained from the U. S. District Court, authorizing him or his deputies to search for the same, and, when found, to seize and take possession.

Of course, charges of this nature, involving loss of merchandise, credit, personal reputation and degradation, coming thus unexpectedly, fell upon the representatives of the firm like a thunderbolt from a clear sky. They were, however, at once met with an unqualified demand and challenge of proof, and, conscious of entire innocence, the offer was also immediately made by Mr. Dodge and his associates to waive all service of the warrant, and to place all books, papers and facilities freely at the disposition of the officials for the purpose of investigation. The offer being accepted, Mr. Jayne, with a retinue of deputies, next repaired to the store of the firm, where, producing a list of what he wanted—invoice books, cash books, letter books and papers (all carefully prepared for him by the dishonest and discharged clerk)—possession was ostentatiously taken of the same, and, on a cart backed up to the front door, they were loaded and carried away.

All records of the business transactions of the house being thus placed beyond the control of its representatives, and the most formidable obstacles in the way of the establishment of their innocence being thus at the same time created, the next step was to proclaim, through the press, the guilt of the firm, and to so magnify the case as to make settlement on easy terms, which the detectives and informers might offer, or absolute ruin, the only now possible alternatives. And this was done so thoroughly and so systematically, and before any adequate opportunity could be afforded for the parties accused to offer anything in the way of defence or explanation, that the great mass of the public were for a time almost persuaded that the accusations and rumors in question must have some real and truthful foundation; the work of disseminating calumny and defamation being nearly equally participated in by the officials, who, under the then existing system of moieties, expected to share in the future plunder of the rich firm; and by the principals or sympathisers of the association of business rivals, who, in the manner before described, had contrived to enter surreptitiously and at night the premises of the firm, and rob them of what was equivalent to wealth—namely, the secrets of their most important commercial transactions.

It is said of some animals that, when one of their number is wounded, the remainder make the misfortunes of their comrade a signal and an occasion for turning upon and devouring him. That a propensity something akin to this exists also among men, would seem to find proof in the circumstance

that, as soon as the firm were arraigned before the public by the press, at that same moment they began to be the continual recipients of all manner of anonymous and abusive letters ; the fact that one member of the firm was President of the Young Men's Christian Association, and that others had been prominent in the Presidential canvass the preceding year, or had been positive and open in expressing their opinions on the subject of temperance, or the Sunday laws, seeming in many instances to furnish the *animus* for the peculiar attacks referred to, rather than the existence of any difficulty with the Government. In one instance an editor of a religious journal wrote that he had become convinced, from what he had seen in the papers, that much or all of the property of the firm had been acquired dishonestly ; and that, therefore, he should feel bound to recommend to all of his brethren who had received aid from the members of the firm, in behalf of religious, charitable, and educational objects, to forthwith return the same, saying, as Peter said to Simon the sorcerer, "Thy money perish with thee." It is safe to say that if the advice, which the writer felt it thus incumbent on his conscience to offer, was in reality ever given, it was never adopted by those who received it, and of the tens of thousands which had, as indicated, been given, not one dollar for any cause ever came back to the donors. As time went on it was further found that the members of the firm were under constant surveillance. Letters came through the mails having all the appearance of having been opened or tampered with ; and in at least one instance, the contents of letters written to Europe were substantially communicated to one of the legal advisers of the firm before the letter could possibly have reached its destination. Suspicion being thus aroused, a watch was set, and an employé, supposed to be faithful, was at once detected in opening and destroying the contents of a letter intrusted to him for delivery at the post-office ; the torn fragments, which happened to be of no consequence, being so carefully collected by the detective from the street, as to admit of the entire reconstruction of what was written in the unimportant missive. Speaking of the espionage by which the firm at this time had reason to believe themselves to be surrounded, Mr. William E. Dodge, senior, in his remarks before the Committee of Ways and Means, also said :

"We found ourselves dogged by spies every step that we took. We could not have a meeting of our partners in one of our dwellings at night without it being known in that dark hole the next morning. We could not do anything at our store without its being known ; we could not have our partners or our lawyers in our private office without its being known. I will relate an instance of this : my partner, older than myself, has been in the habit, for twenty years, as January came round, of opening his desk and clearing it out, some rainy day, of the accumulation of papers which it contained, throwing them on the floor, and having a boy put them in the fire and burn them. He did so on the 8th or 10th of January,

and within a half an hour we received a letter from our attorney to come quickly to his office. We went up there, and he said, 'What in the world is the matter? Jayne is tearing about in a terrible way. He says that Phelps, Dodge & Co. are burning their papers, and that he will have every one of them in Ludlow street jail before night.' How did he know it? How did he know that these papers were burned up? Because he paid a man in our store to give him information. He had our second book-keeper in his employment. What he paid him I do not know, but that he was in his employment I do know. We traced that fellow and turned him out of our store. And where did he go when he was turned out? Where should he go? He went where he was employed. And where is he to-day? He is clerk in the Post-office, in the money department—a place obtained for him by the special agent of the United States."

One instance more of the extraordinary and scandalous elements that were invoked in the course of these transactions, for the purpose of persecution and intimidation, may also be cited. Pending the ultimate settlement of the case, as made up against the firm by the officials of the Federal Government, it came out that there was in the possession of the legal counsel retained by the dishonest clerk and informer a package of letters—wholly relating to private or social matters, and having no connection whatever with the matters at issue—which had been stolen from the desk of one of the junior members of the firm, either by the clerk referred to or by the persons who, under his auspices in part, had been in the habit of rummaging the store of the firm at midnight. The control of these letters was from the outset made no secret; nay, more, they were spoken of unblushingly, from the very first, as an agency by which money was to be extorted; and the members of the firm and their legal advisers were distinctly notified that if the terms of settlement to be dictated by the moiety hunters and informers were not promptly acceded to, that then the letters should be immediately made public.

If this statement seems to the reader too monstrous for belief, he is respectfully referred to the testimony of B. G. Jayne, and also to an article from the *N. Y. Graphic*, given on pages 62 and 63 of this volume. And, as further illustrating the mental idiosyncracies of the men who, under a free and republican form of government, follow the trade of the spy and informer, it is to be noted that, when Jayne was before the Congressional Committee of Ways and Means, he claimed that it was a matter specially to his credit that, after the letters in question had been used sufficiently long as agencies of annoyance, he finally interfered to prevent their publication, and that, after they had been read by Gen. Butler and others, he compelled their restitution to the person from whom he knew they had been stolen; a claim just as legitimate as would be that of a grand inquisitor to the attribute of mercy, on the ground that he always strangled his victims before roasting their bodies.



And all this terrible and unscrupulous use of power, it may be further added, not for the purpose of vindicating and sustaining the law—for, as it was ultimately and satisfactorily shown, the offences committed were merely technical and insignificant—but simply and purely to extort money from a firm which was known to value their good name and reputation as something above money, and, therefore, in the slang parlance of the ring, could be made “to bleed freely.”

Meantime, the examination of the books and papers removed from the store to the Custom House went on under the personal supervision of the detectives whose pecuniary interest it was to allow no irregularity to escape them—aided also by the dishonest and discharged clerk, whose acquaintance and familiarity with the books, while in the employ of the firm, was made the basis of the information on which the federal officials originally commenced proceedings. A *pro forma* suit against the firm for a million of dollars having been also instituted, the idea for a time became current with the public that this sum represented the amount by which the Government had been defrauded; and later, when a compromise or settlement had been effected, that \$271,000 was the correct figure. When, however, the results of this critical and minute investigation on the part of the Government were made known (which was not until after the firm had been induced to agree to a settlement), the following facts were found to have been established:

1st. The range of investigation entered upon covered a period of five years of business transactions by the firm of Phelps, Dodge & Co.

2d. During this period the aggregate invoice value of the merchandise imported by the house was in excess of \$30,000,000, on which the duties paid amounted in the aggregate to between six millions and eight millions of dollars.

3d. Out of the whole number of invoices representing this enormous importation the Government selected about fifty, which, it alleged, were vitiated by reason of the under valuation of certain items embraced therein. The total amount of these invoices was \$1,750,000.

4th. The total invoiced value of the items claimed to have been under valued was \$271,017.23.

5th. The total amount by which these several items, aggregating \$271,000, were claimed to have been under valued, was \$6,658.78.

6th. The total amount of duties claimed to be lost to the Government by reason of such under valuation was \$1,664.68.

How these irregularities, which the Government was pleased to term under valuations, occurred, has been so clearly and satisfactorily set forth by Mr. Dodge, in his address before the Committee of Ways and Means of the

United States House of Representatives, March, 1874 (see pages 17-20), and also in the statement made by the firm to the public in April, 1873, that it is unnecessary to here again enter into a minute detail of explanations. But, in a few words, they may be stated to have been due to a neglect on the part of the invoice and shipping clerks in Liverpool to make the prices of certain exceptional articles (unusual sizes of tin plate of comparatively small value) contracted for, months in advance of delivery and shipment, agree with the market prices of similar articles on the day when the invoices were prepared, and the merchandise placed on board the vessels for transatlantic transportation; the United States customs laws and regulations requiring that goods intended for importation into the United States shall be invoiced at their market value at the time and place of shipment, while in actual practice it is the rule to assess the duties on market value only when it is in excess of actual cost, but on actual cost when it is in excess of market value. Now, it never was pretended by the agents of the Government that this rule in respect to market value had been regularly and systematically violated by Phelps, Dodge & Co. in their importations, but, on the contrary, it was admitted that the cases in which any irregularity occurred were very few, wholly exceptional, and covering but a very small amount in value. Thus, for example, in one of the vitiated invoices the whole amount of alleged under valuation was \$47.31 on a total invoice value of \$22,318.81; on another, \$47.31 on an invoice aggregate of \$17,316; while on a further case of total shipments of the invoiced value of \$167,536.18, the utmost loss claimed by the Custom House officials to have been experienced, and for which it was proposed to confiscate the whole, was \$162.23, or about the amount of wages which the firm would have paid during the same time to the head porter, or to an under clerk.

On the other hand, a careful examination of the seized books and papers, after they were returned by the Custom House authorities, showed that during the year 1872—the year in which the bulk of the undervaluations were charged to have occurred, and which was a year of great fluctuations in prices—the firm, in their anxiety to strictly and scrupulously conform to the law, had so often and so largely advanced the price of their shipments over actual cost, to meet the temporary requirement for market value by reason of such fluctuations, that they paid to the Government many thousands of dollars more than they would have been required to do had the goods been invoiced and shipped on the day on which they were made the subject of contract. So that, while in reality the Government cannot rightfully claim to have lost a dollar through the importations of the firm of Phelps, Dodge & Co., it is at the same time liable to the just imputation of

having taken an advantage of a technicality of law to exact many thousands of dollars from the same firm, in excess of what it could have taken had the law been framed on the strict principle of equity and common mercantile fairness, or had their goods in all instances been shipped at the time they were actually purchased.

A mere plain statement of the case, as the Government ultimately were obliged to state it, and as the interested partisans of the Custom House were obliged to confess it, was therefore equivalent to a *reductio ad absurdum*, and was almost unanimously so accepted by the public the moment the public clearly understood it.

It would be, moreover, almost impossible to find a more striking illustration of the fickleness of that great arbiter of human actions—public opinion—than the following sequence of occurrences. In December, 1872, suit was commenced against the firm of Phelps, Dodge & Co. by Hon. Noah Davis, U. S. District Attorney, for defrauding the customs revenues. In January following this suit was discontinued and the case settled. In May, the case in the meantime having been fully explained, the merchants of New York testified to their opinion by unanimously reëlecting Mr. William E. Dodge, the senior partner of the firm, to the first place in honor in their gift, namely, that of President of the N. Y. Chamber of Commerce; and at the annual banquet of the Chamber the next year (May 7th, 1874,) the President, having the former District Attorney on his right, with immense applause addressed that gentleman in the following language:

"We had anticipated the pleasure of having our highly honored Chief Magistrate, Gov. Dix, respond to the next toast, but a telegram has been received expressing his regret that the pressure of public duties will not permit him to be present. I shall ask a gentleman to take his place who has honorably filled many high positions in our State, and has recently commended himself to the esteem of our best citizens by his honest and impartial trials and condemnations of the men who had so long plundered our city government, though he has also secured the enmity of those who sympathized with their crimes. He has also taken a noble stand in the effort to secure to our merchants a revision of our revenue laws. I will call on the Hon. Noah Davis."

Thus called upon, the former prosecuting official of the Federal Government responded in a speech from which the following is an extract:

"You have alluded, Mr. President, to the case of your own house. There is an old saying among lawyers that hard cases make bad laws. That is true of the decisions of courts. But in practical life hard cases make good laws, for they arouse the attention of the community to evil laws and compel their abrogation. The blood of the martyr is the seed of the Church! Not unfortunate will it prove if the seed from which springs regenerated laws shall be found to have been poured out in the blood taken from your veins. Denounced as I have been for having certified, solely through a sense of justice, that while doing acts which were clearly violations of the law, and thus subjecting you to heavy penalties, you and your house were

free, in my opinion. from all intention of defrauding the Government, I still hold to that opinion as the exact demand of truth and justice toward yourself. I have never, on any occasion or under any circumstances, expressed any contrary opinion."

But notwithstanding the result to which the critical examination of the seized books and papers of the firm had led the Government, the suit and the proceedings against the firm were not discontinued; but, on the contrary—and as was natural, considering the motive which actuated the officials interested—were pressed more vigorously, resulting finally in a compromise between the Government and the firm, by which the latter paid to the former the sum of \$271,017.23, the amount of the several items said to have been under valued.

Now, why, under the circumstances, this compromise was agreed to by the firm of Phelps, Dodge & Co.; why the large sum indicated was paid; and why the proceedings commenced in the United States courts were not allowed to run to a judicial conclusion, has ever been regarded by no small part of the public as one of the most extraordinary and unaccountable things connected with this whole business. The matter, however, admits of a full and satisfactory explanation, and to this explanation it is now proposed to ask attention.

In the first place, it must be borne in mind that the facts as above detailed, respecting the exact manner in which the irregularities on which the Government based its proceedings, occurred, and the comparatively insignificant sum which, under the worst hypothesis, could be claimed to have been lost to the customs revenues, were not made known to the firm or to the public at the time this compromise or settlement was effected; and, for the most obvious reasons, it was never intended that they should be known until the largest possible sum had been extorted from the firm, and the moiety of the plunder allowed by law had been divided among the official associates, lawyers, spies, detectives, and professional informers. The books and papers of the house were in the close possession of the Custom House authorities. No statement of specific charges were ever presented by the officials, and at no time was the firm ever able to have a complete list of the invoices, or the items of the invoices in respect to which it was alleged that under valuations had occurred.

And at any examinations of the books and papers no person belonging to the firm, or in any way representing it, was ever invited to present; but, at the same time, special pains were taken to continually represent to the public through the press, and to the firm by private conversation, that the case was a most atrocious one, without any mitigating circumstances, and, in point of magnitude, something without a parallel in Custom House experience.

Again, under a strict construction of the laws then regulating importations, the least taint in any item of any invoice subjected not only the items but also the entire invoice to confiscation, even though the under valuation of the item amounted to only five cents, and the entire valuation of the invoice should be in excess of a half a million ; and if the case had been carried to the courts, the question of intent to defraud was not one for the courts to consider, but was a matter reserved exclusively for the Secretary of the Treasury to pass upon, if application following judgment should then be made to him for a remission of penalties ; and as this point is most important, for a full appreciation of the situation of the firm, reference is here again made to Judge Davis, who, in his speech at the banquet of the Chamber of Commerce before referred to, laid down the law as follows :

“ Where an act forbidden by the statute is knowingly done, though in ignorance of the law, and even in supposed compliance with it, if a loss of duties is the result, the question of actual intent to defraud is not important, in a legal sense, until the case, after judgment, reaches the Secretary of the Treasury on application for remission—which he is only permitted to grant where ‘ intentional fraud ’ or ‘ wilful negligence ’ have not occurred.”

To enter into court confessing a technical, though unintentional violation of the statute, would be, therefore, to incur the risk, or rather to face the certainty of a *pro forma* decree or judgment confiscating the entire value of all the invoices which contained any items under valued to even the smallest extent. And in this connection it is important to recall what has already been stated, that the value of these several invoices amounted to the large sum of \$1,750,000; and the value of the several items embraced under them, which were claimed to be under valued to \$271,017.38, but that on these items, by the Government's own showing, the under valuation, accruing through a period of months, was only \$6,658.78, and the maximum loss of duties, \$1,664.68 ; no allowance being made for duties overpaid during the same time as the result of over valuations.

A decree or judgment of the court confiscating the full value of the invoices, \$1,750,000, being once entered, the determination as to whether the judgment should be enforced in whole or part became a matter wholly dependent on the pleasure or arbitrary will of the Secretary of the Treasury. In most countries—even the most despotic—where the reputation of the great merchants is a matter of pride alike to governments and people, and where to foster the reputation and business of great commercial houses is regarded as equivalent to strengthening national resources and national revenues, an appeal to a high officer of state invested with full powers, under such circumstances as have been detailed, for an abatement



or entire remission of penalties might have been made with no apprehension as to the nature of the decision. But in the United States, which claims to possess the most free and enlightened of all forms of government, it must be confessed with shame and mortification that the situation was such, in 1872-3, that few, if any, sagacious merchants could be found to entertain the opinion that, in an appeal to the Treasury, in a confiscation case involving one million seven hundred and fifty thousand dollars, a decision would *certainly* be obtained in consonance with the most obvious principles of ordinary fair dealing and equity. And if to any this judgment may seem harsh and unwarranted, their attention is asked to the following circumstances:

Soon after the accusations were publicly preferred by the officials against the firm of Phelps, Dodge & Co., and a formal prosecution had been commenced against them in the courts, the representatives of the great house repaired to Washington to present their case to the federal administration. Considering the former high standing of their firm, the immense amount previously paid by them to the Government in a long series of years in the form of duties, without any dispute or controversy, and the further fact that a majority of the individual partners of the house were not only politically allied to the administration, but had been among its most devoted and substantial supporters, the representatives in question, in their difficulties naturally expected a sympathetic and generous consideration. But this was not to be. Justice at Washington, in view of the possibility of distributing a moiety of \$1,750,000 among some eight or ten prominent office-holders and their counsel, was never less inclined to be tempered with mercy; and while the cold advice was given not to compromise and settle with the Custom House officials, but to refer the case to the slow action of the courts, the intimation was also conveyed, in no dubious language, that in all these matters the Treasury regarded the interests of the Government and the interests of the merchants as diametrically opposed to each other; as if there could be one interest for the Government and another for the people, or as if it was the correct policy of the Treasury Department to antagonize itself as a rule with the great business interests of the country and their legitimate representatives.

Take, also, another fact. At the very outset of this case, or as soon as it became apparent to the Custom House officials and their allies that a "placer" had been struck, rich beyond all precedent in its capacity for plunder, the most extraordinary steps were taken to work it most thoroughly. For this purpose the discharged clerk and thief, who was the original informer (but for whose name in the "information" filed the name of B. G. Jayne was substituted), employed three lawyers in the City of New York,

all men of ability, but in whose estimation, their acts being the criterion, money was more valuable than a good name. In illustration, attention is here asked to the following extract of the report of the testimony of B. G. Jayne, when under investigation before the Committee of Ways and Means, U. S. House of Representatives—Mr. Sheldon, of Louisiana, and Mr. Beck, of Kentucky, being the examiners :

Mr. SHELTON.—Who was the money given to? A. It was awarded to me.

Q. By the Secretary? A. Yes, sir.

Q. How could he award it to you if he knew the other man was the informer? A. I reported the case, and there was no adverse claim. It belonged to me, if there was no adverse claim under the law.

Mr. BECK.—What is the name of the man, and what is the name of his attorney? A. The name of the man is Charles F. Hervé. He had three or four attorneys and counsel; they were associated together; I do not know in what way or in what form, or anything about that.

Q. Which one came to you with the papers? A. Well, sir, I think there were two of them that came with him in the first place.

Q. And brought the papers with them? A. Yes, sir. Under the law the man bringing the information to my office was entitled to one fourth of the net proceeds, no matter who works up the case. I was entitled to nothing save such sum as they would voluntarily pay me, but they requested that I should put the case in my name, and should pay them two thirds of the amount, which I did.

Q. Did these lawyers, or any of them, in any of their conversations with you, tell you, or did this man Hervé say in their presence that he had obtained these papers surreptitiously, or stolen them from the books? A. He never told me how he came by them, and I never asked him.

Q. Didn't you know they were torn out of their books, and could you not see where they were torn from? A. When I got the books I found where the papers I had matched on. It was pretty good evidence that they were torn out.

Mr. BECK.—The lawyer of the informer brought you the papers? A. Yes, sir.

Q. And you presumed they were stolen, and I suppose he knew it? A. It is not my duty to presume in any way. The law makes it my duty to ascertain if any fraud has been committed; to avail myself of every source of information.

Q. Would the courts of New York allow a lawyer to practice at their bar when he was an attorney of a man known to be a thief, and dealing with stolen papers? A. I believe the courts of New York and every State in this Union allows attorneys to defend thieves and protect them.

Q. But do they allow them to bring suit and get fees out of the proceeds of plunder when they themselves have been the agents or aiders and abettors of the thieves? A. I do not get the exact point of your question. Please state it again.

Q. I will put it in this way: Did the Secretary of the Treasury know, when he paid you that money, that you were to give two thirds of it to the thief and his lawyer? A. The Secretary of the Treasury knew that I presented evidence, and I told him the whole story of its source, and how the ease came to me, and all about it.

Q. And knew that this thief and his lawyer were to get two thirds of it? A. Well, you call him a thief; yes, sir.

Q. Yes, sir; I do call him a thief. And the Secretary of the Treasury knew that he was to get two thirds of it, and he paid the money? A. The Secretary of the Treasury knew that my name was put on that information.

Q. Do you think it was your duty, as an officer of the United States, to communicate that fact to the officer who was to pay out such a large sum of money—the fact that two thirds of the portion coming to you was to go to a man and a lawyer, one of whom was a thief and the other was aiding and assisting a thief? A. You name him a thief.

Q. I will ask you whether, if you were to raise your hand to heaven, you could say you did not believe, and had information upon which you acted, that they were stolen papers? A. I do not know that I am called upon to say whether I consider it a theft or not.

The informer having thus provided for his prospective interests by “three or four counsel associated,” Mr. Jayne, the head detective, to make sure of securing his share in the plunder, next retained for his private benefit the professional services of Honorable (“heaven save the mark !”) Benjamin F. Butler, at that time a member of the United States House of Representatives, and leader of the dominant political party, and whose influence with the federal administration was acknowledged to be all but irresistible. As one fourth of the penalties, or amount of confiscation decided upon (over \$400,000 in case the full value of the invoices were taken, or some \$60,000 if it should be only the aggregate of the under valued items), was to accrue to the Collector, Naval Officer, and Surveyor of the Port, these gentlemen also called in to their aid, even if they did not professionally retain as counsel, one, if not two of the most distinguished and influential leaders of the party of the administration in the Senate of the United States. (*See pages 247–8, Evidence before the Committee of Ways and Means, 42d Congress, 1st Session, Miss. Doc. 264; also, pp. 165, 166, this volume.*) And in addition to all this extraordinary employment of agencies, the fact that the statute gave to the United States District Attorney, the United States Marshal, and the Clerk of the Court a percentage on the amount of penalties to be adjudged, or of the value of the goods to be confiscated, obviously made it for the interest of all those officials not to array themselves on the side of leniency, or to regard the case from any other than the most unfavorable standpoint.

It was also well known at this time that the then incumbent of the office of Secretary of the Treasury, in view of being elected to the Senate, was not likely to retain his office, and that, therefore, the power of deciding how far a judgment of the court predicated on the strict letter of the law, and without reference to intent, should be enforced, would vest exclusively in his successor; but of this successor nothing could be definitely predicated, other than that he was likely to be a friend of the eminent representatives and senators who had been retained by the prosecution.

Now, whether the firm of Phelps, Dodge & Co. had reasons for any apprehension in respect to this change in the head of the Treasury, may, perhaps, be best answered by recalling the fact that popular opinion was all but unanimous in ascribing, a few weeks later, the nomination of a new Secretary to the influence of Gen. Butler ; and, furthermore, that in about one year afterwards this same Secretary, under the pressure of public opinion, found it expedient to resign his office, by reason of the disreputable transactions that occurred under his administration, in connection with the so-called Sanborn contracts, of which last Gen. Butler was also the engineer and adviser.

Nothing, therefore, could be more pertinent than the following language, used by Mr. Beck in his speech before the House of Representatives, descriptive of the situation :

"It requires no argument to prove how utterly helpless these merchants were in the hands of such a power, stimulated by such incentives to fasten guilt upon them. No one of these men could get a dollar if they did not get it out of their victims ; all could reap a rich harvest if they could by any means force them to yield to their demands.

With such an array of officials against the merchants, what was an appeal to the Secretary worth ? Every officer on whom he could rely for information was directly and largely interested in having the highest penalty imposed. The leading administration Senator, and one of the ablest Republican members of this House were their advocates and attorneys. What private man stood any chance with the Secretary under such circumstances ? What Secretary, under such an administration as this, would dare to oppose such a combination ? Sir, it was apparent from the first that they had to pay whatever sum they were told would satisfy the rapacity of their persecutors, *and they paid it*. Any of us would have done as they did."

To appreciate fully the situation of the firm the reader should also bear in mind that, pending any settlement or suit in court, the seized books and papers remained in custody of the officials, thus seriously interfering with the ordinary business transactions of the parties to whom they belonged. At the same time, the credit of the firm tended to become impaired, especially in foreign countries, where the mere fact that the Government had instituted charges and seized property was regarded by the uninformed as all-sufficient evidence that the House had ceased to be responsible ; and lest reports and rumors transmitted by ordinary agencies should not be sufficient to work as much mischief in this respect as was desired, the same unscrupulous competitors in business and their sympathizers, who had connived at the entrance of the store of Phelps, Dodge & Co. at midnight the year before, took upon themselves not only to have false and malicious articles written and published in certain papers, but mailed large numbers of such publications to all parts of the world where the firm was known to have business connections and correspondents. As illustrations of the effect of all this, it may be mentioned that in places as remote as Penang, in the Straits of

Malacca, where Phelps, Dodge & Co. were known as extensive purchasers of tin, a strong and almost successful attempt was made to throw discredit upon the bills of the house; and, also, that in more than one instance the delivery of consignments of metal to the firm from Europe was suspended by cable telegrams to the owners or agents of the transporting vessels, for the reason (as afterwards explained in letters) that such reports reached the consignors, in respect to the position and difficulties of the consignees, as to make the order of non-delivery an act of but the most ordinary prudence and self-insurance.

Thus, then, is answered a question which to many has seemed an inexplicable mystery. Why did the firm of Phelps, Dodge & Co. settle or compromise by paying \$271,000, the amount of the items comprised in the several invoices which were said to have been under valued? To repeat, they settled because the continuance of the situation seemed to involve inevitable commercial ruin. "We paid the money," said Mr. William E. Dodge, in explaining this matter to the Committee on Ways and Means, "in ignorance of the fact of the amount we owed to the Government. ' We never had a bill of specifications; we have not got one to-day; we have got simply the list of the vessels on which the goods were imported. We settled, and this has become the biggest case on record. It is known the world over. We look back upon it, and we think, as you gentlemen think, no doubt, that we were fools. We were fools, but there was terror in all these things; there was terror in that first day when we went into that dark hole in the Custom House; there was terror throughout."

At my age, having been a merchant fifty years, I desired to die in peace. When the Secretary of the Treasury said to me, "Mr. Dodge, you had better go before the court," he knew probably what I did not know, but which, if I had known, I never would have paid the money. I had no knowledge that there was only sixteen hundred dollars involved in the whole case, running over five years, and covering importations to the amount of \$30,000,000. I am not so big a fool as that; but the fact was kept from us, and kept from us purposely. I had no idea of it."

Of the \$271,017.23 extorted, under the circumstances as above related, from the firm of Phelps, Dodge & Co., and which they paid as the price of the discontinuance of persecution, one half, less fees of the court, was paid into the Treasury of the United States. The disposition of the remainder was thus graphically and significantly detailed to the House of Representatives by a member of the committee:

"The costs in court, though nothing was done, amounted to \$8,145.09. The share of the District Attorney in the \$271,000 was over \$5,400; that of the Collector, Naval Officer and Surveyor was \$21,906.01 each, or \$65,718.03 in all. Jayne got \$65,718.03, which he was to



divide with the thief who stole the papers. General Butler was paid a large fee, out of his and the thief's portion, by Jayne. How much Senator Conkling got as adviser of the Custom House officers does not appear. They failed to avail themselves of our invitation or notification that we would gladly hear them if they had anything to say, so that we were unable to prove what their private arrangements with counsel were."—*Speech of Hon. James Beck.*

And here properly comes in an incident which contributes not a little to increase the romance with which the history of this extraordinary case is already invested ; for, as time went on, and the attention of members of the bar was specially given to the consideration of the principles according to which controversies between the Government and the merchants, arising out of the construction of the most complicated and absurd system of revenue laws that ever existed, were to be judicially settled, a statute (Act of Congress) was discovered to be in existence which, had the case of Phelps, Dodge & Co. been taken into the U. S. courts, would have been an effectual bar to the continuance of any proceedings against them looking to either penalties or forfeitures. This statute, passed in 1868, but curiously overlooked and forgotten until 1875, even in important cases argued and decided before the Supreme Court at Washington, recognized, intentionally or otherwise, to the fullest extent, that great principle of the Anglo-Saxon law, that no man could be compelled to give testimony criminating himself, or testimony that might subject him to a penalty or forfeiture, and reads as follows:

"That no answer or other pleading of any party, and no discovery or evidence obtained "by means of any judicial proceeding from any party or witness in this or any foreign "country shall be given in evidence, or in any manner used against such party or witness, "or his property or estate, in any Court of the United States, in respect to any crime, or for "the enforcement of any penalty or forfeiture by reason of any act or omission of such party "or witness: *Provided*, That nothing in this Act shall be construed to exempt any party or "witness from prosecution and punishment for perjury committed by him in discovering "or testifying as aforesaid.

"SEC. 2. *And be it further enacted*, that this Act shall take effect from its passage, and "shall apply to all pending proceedings as well as those hereafter instituted."—*U. S. Laws of 1868, Chap. 13.*

How a law of this character could have so long remained practically unrecognized on the statute book (being brought forward apparently for the first time by the counsel for the defence, S. B. Eaton, Esq., in the important case of the United States vs. Hughes, in February, 1875,) finds explanation, possibly, in the circumstances that, previous to the revision of the laws of the United States (enacted June 22d, 1874), the statutes of the United States for the assessment and collection of the revenue on imports were so numerous and so complicated that it had been almost impossible for even experts—to say nothing of merchants—to know exactly what the law was.

Thus, between the dates of the general Tariff Act of March 2, 1861, and of the Revised Statutes, Congress passed some sixty laws relating to duties on imports and their collection. Five of these, namely, two enacted in 1861, one in 1862, one in 1864, and another in 1872, may be classed as general tariff acts, because they covered a large class of articles. Neither of these in terms entirely repealed the previous ones, nor did Congress intend they should be altogether repealed; and so each successive enactment of the whole sixty, after the first one, may be said to have overlapped and modified all that preceded it. It was, therefore, only by the most careful study that it became possible to determine how much at any given time any specific enactment of the series remained in force. And, as a further illustration of the difficulties growing out of this multiplicity of unrepealed statutes, the curious case of *Smythe vs. Fisk* may be cited, in which the Collector of the Port of New York having sued an importer to recover penalties, the District Court of the United States, presided over by a judge familiar with revenue laws, decided that the duties were chargeable under one statute, while the Supreme Court of the United States, to which the case was appealed, unanimously reversed the decision, on the ground that the duties were chargeable under a subsequent and different enactment; and yet it was under such a system of laws, the provisions of which were unknown to even the judges and to members of the bar making revenue cases a specialty, that the firm of Phelps, Dodge & Co. were fined \$271,000 for an error involving an apparent loss to the Government of \$1,600, in an importation extending over five years of over \$30,000,000, and on which duties were paid to the extent of from six millions to eight millions of dollars. It is, furthermore, safe to affirm, that if the records of any private business extending over such a period and embracing such an amount were to be thoroughly investigated by outside experts, each one actuated by the strongest of motives, *i. e.*, large pecuniary gains, to discover errors of omission or commission, that there would be exceedingly few that could be found to stand the test.

The case having been thus settled, it was evidently the expectation of the moiety people and their advocates that the firm of Phelps, Dodge & Co., like many other merchants who had before been made the subject of similar though smaller exactions, would be content to be quiet. But the firm, conscious of their entire innocence, and feeling that a grievous wrong had been done them, determined that they would not keep quiet; and they accordingly, on the 15th of April, 1873, caused to be published a statement of the case from their standpoint of view, addressed "To our friends and the Public." This statement, which was probably published entire or in abstract in every paper or journal of the United States (so great was

the interest in the case), was so clear in its presentation of the facts, and so strongly fortified by accompanying letters from Hon. Noah Davis, United States District Attorney at the time of the inception of the difficulties; from Hon. Thos. H. Dudley, Consul of the United States at Liverpool, who verified and certified to the correctness of the identical invoices afterwards claimed to be undervalued; and, finally, from the head detective and informant himself, B. G. Jayne, that an immense revulsion of public feeling was excited; so much so, that those who had originally been most prompt to condemn the firm now became the most eager and ready to defend them. In this matter the mercantile community throughout the country took the lead; and the New York Chamber of Commerce especially signified its opinion by unanimously reëlecting Hon. William E. Dodge, the head of the firm of Phelps, Dodge & Co., to the post of President of the Chamber—an office from which, it was well known, it was his intention to have retired.

Public sentiment, thus aroused to the iniquity which had been perpetrated by United States officials under the pretence of subserving law and justice, did not, furthermore, as time went, subside; but, on the contrary, so gathered strength that, on the meeting of Congress in the following December, there was no one matter upon which the opinion of the country was more pronounced and unanimous than that the treatment to which the merchants of the seaboard cities had been subjected by the Treasury officials should be specially and thoroughly investigated by one or both branches of the national Legislature.

The Committee of Ways and Means of the House of Representatives, therefore, at an early day, in accordance with a resolution of instructions on the part of the House, and being at the same time vested with the requisite authority, entered upon the investigation—the National Board of Trade, and the Chambers of Commerce and Boards of Trade of most of the leading cities of the country being represented before the Committee, either by counsel or delegations of members. The investigation once inaugurated, and commencing in February, 1873, lasted, with some interruptions, until the following May. Among the first persons called before the Committee were Hon. William E. Dodge, and Jayne, the detective and informer of record in the case of Phelps, Dodge & Co. The examination of each lasted several days and alternated. Like the cuttle fish, which endeavors to protect itself by blackening everything contiguous, Jayne hoped to relieve himself in some degree from the feeling of public detestation that surrounded him, by gross abuse and denunciation of the merchants of New York in general, and of Phelps, Dodge & Co. in particular—Gen. Butler, a member of the House at the same time, being his acknowledged friend and counsel.

What the Committee thought of the statements of Mr. Dodge may be inferred from the report subsequently made by them to the House, recommending the repeal of the laws under which the house he represented had been arraigned and mulcted. What they thought of Jayne may be inferred from the following picture, which the chairman of the Committee, Hon. H. L. Dawes, drew of him in his speech, accompanying the report, before the House:

"Sir, who is the informer? He is to have half of the whole. The officials take the other half and divide it into three parts. His is the lion's share. Sir, the informer, in every position of society, in every place, and in every calling, is an odious and despised being. Everybody shrinks from him, no matter what be his position or his calling. He that goes about making a business of informing against his neighbor so shocks the common sense of justice, decency and honor in all mankind, that he is universally despised. But let him do it for pay; let it be understood that he goes up and down the earth paid to inform against his fellow men, and the intensity of the feeling of hatred with which he is regarded, and the feeling that he ought to be hunted around the earth, is increased tenfold. Add to that that he is to have half of what may be made out of his informing. He is bad enough when he volunteers without compensation, from any motives of malice or otherwise, to inform against his neighbor; he has no place whatever in decent society; but when he does it for pay, much more, when he is to have half of the proceeds of his cursed employment, the door of decent society ought to be and will be shut against him.

"The leper may be tolerated among men, for his leprosy is his misfortune. The man that carries about him a loathsome disease, that is not his fault but his misfortune, engages the charity of the world to build an hospital for him, and to care for him with pity and compassion. But the vile, festering, putrescent informer, who goes about the earth assured of one half of what he can make by his informing, finds no place as yet where decent men will harbor, or countenance, or associate with him. We guard this man, roving around among the merchants of the cities of New York, Boston and Philadelphia, with money enough, the fruits and promises of his success, to enable him to furnish the means that will invade the confidential relations that exist between the merchant and his clerks, tainting the most sacred trusts, lying in wait for the unwary, and seeing the merchant unwittingly put in his foot by omitting, it may be by accident or by ignorance, or by any of the thousand ways consistent with his honesty, to conform to the most complicated system of revenue in the world—standing, I say, at the desk, and seeing the merchant from day to day openly and unconscious of any wrong, making mistakes in his invoices, with a law behind him that says a mistake in one item forfeits the whole invoice, and then, when they are piled up by the dozen upon the desk of the Custom House, going and informing against him and getting one quarter of the forfeitures.

"Shall the Government of the United States take the wages of his sin and his iniquity and divide with him?"

It is also pertinent to here add that, pending his examination before the Committee, B. G. Jayne tendered his resignation of his position under the Government, and that the same was promptly accepted.

Among the other persons who appeared before the Committee in furtherance of the investigation, and in opposition to the whole system under

which Jayne and his associates had operated, were Hon. Jackson S. Schultz, Hon. Noah Davis, Daniel C. Robbins, Esq., John C. Hopper, Esq., Cephas Brainerd, Esq., S. A. Eaton, Esq., of New York ; B. F. Nourse, Esq., of the National Board of Trade ; John W. Candler, Hon. Alexander H. Rice and H. D. Hyde, of the Boston Board of Trade ; John Field, D. F. Houston, James E. Caldwell, of Philadelphia ; Andrew Reid, of the Baltimore Board of Trade, and others. On the other side, in addition to Jayne, appeared the successor of Judge Davis in the office of District Attorney of New York, Geo. Bliss, and Francis D. Moulton, of Brooklyn.

As the result of these investigations the Committee of Ways and Means reported a bill repealing all provisions of law under which moieties of any fines, penalties, or forfeitures were paid to informers, or any officers of the United States ; and also all provisions of law authorizing the arbitrary seizure of books and papers ; which bill, after being slightly amended, passed the House of Representatives unanimously, and the Senate with only three dissenting votes. The verdict of Congress, after a full and careful examination, was, therefore, most expressive and unequivocal in respect to the character of the transaction reviewed ; the action of Jayne and his associates, and the treatment which Phelps, Dodge & Co. and other merchants received at the hands of the so-called representatives of the Government ; a result, if unanimity of sentiment be considered, almost without parallel in the history of American Congressional legislation.

It might naturally have been expected that at this point this extraordinary history would have been permitted to have come to an end ; but it was not so to be ; for another incident, further illustrative of the character of the men whose action in seeking to make the whole people partners in their scandalous combinations against individual citizens had been so thoroughly condemned by Congress and the public, was yet to be added to the details that preceded, and which have here been related.

In this the chief actor was Gen. Butler, who, as already stated, was employed by Jayne to assist him in his schemes against the New York merchants, and who also acted as Jayne's confidential friend and adviser when the latter was before the Committee of Ways and Means for examination. Gen. Butler himself, however, did not appear before the Committee to assist in the investigation, as it was confidently asserted that he would, although every opportunity to do so was offered him. Neither did he take part in the very full discussion before the House, when the bill repealing moieties and the right to seize books and papers was reported, considered, and adopted ; although Hon. Ellis H. Roberts, of New York, in the subsequent proceedings of the House, said to him :

"I have asked you three times to come into this House and debate this question, and you had not the courage to come.



Mr. BUTLER, of Massachusetts.—Not when I was sick.

Mr. ELLIS H. ROBERTS—

“I did hear him groan:

Ay, and that tongue of his,

\* \* \* \*

Alas! it cried, ‘Give me some drink, Titinius,’

As a sick girl.”

Mr. BUTLER, of Massachusetts.—Yes, I am like Cæsar.

Mr. ELLIS H. ROBERTS.—Yes, “As a sick girl.”

When the so-called “Moiety” bill was passed, General Butler, apparently unwilling to constitute a minority of *one*, also refrained from voting against it, and likewise remained silent when another bill was acted upon, repealing laws under which another client and *protégé*, Sanborn, had drawn large sums from the treasury for nominal and unnecessary services. Some two or three days, however, before the close of the session, Gen. Butler asked of the House that the evening of Friday, June 19th, might be assigned for general debate, with the understanding that he himself would occupy the floor; and as no business was assigned for that evening, “the granting of the Hall to Butler,” says the correspondent of the *New York World*, from whom we quote (under date of June 20th), “was pretty much the same thing as granting it to a company of negro minstrels, or to a band of Japs who advertise to swallow knives and spoons. The desire to hear Butler was irresistible, but he by no means got the two thirds assent without trying twice for it. Having failed in his first trial, he cajoled the more fawning Democrats, and assured them that, whatever happened, it would not be a Democratic funeral, but that, contrariwise, they would be called on to participate in a very jolly wake; and, accordingly, Gen. Butler got the floor for Friday.”

As was to be expected, the speech of General Butler, made under the circumstances and at the time above noted, was a rearraignment of and an attack on the merchants of New York, and the firm of Phelps, Dodge & Co. in particular, as undoubtedly in his opinion the best method of vindicating himself and the clientage of spies, informers and fraudulent revenue contractors whom he had, for pay, counseled and protected—and for scurrility, mendacity and buffoonery, was without parallel in the annals of our national Legislature.

The investigations and recent report of the Committee of Ways and Means having, however, left him no vantage ground for attack in reference to any recent proceedings, and as defamation of the character of those whom his clients had plundered and persecuted was the main or sole object aimed at, Gen. Butler’s only recourse was to go back and invent and mis-

apply certain old stories of the past, hoping undoubtedly that no one, on the spur of the moment, would be found to deny and prove their falsity; and, also, probably acting upon the principle that a lie well told has always the semblance and often the efficacy of truth; but in both of these anticipations General Butler was disappointed—his attacks against the firm of Phelps, Dodge & Co. recoiling most disastrously against himself. Thus, in the first instance, he endeavored to throw obloquy upon the firm by asserting that, years ago, they had evaded the payment of the customs duty on lead by importing it in the form of statuary, under a clause of the tariff which admitted statuary free of duty. It so happened, however, that a published statement of this whole matter had been recently made, showing, beyond the possibility of any question—1st, that at the time of the event referred to by General Butler, the firm of Phelps, Dodge & Co. was not in existence; and, 2d, that whatever the transaction was, it was passed upon at the time by the courts, and decided to be entirely legal; and the attention of the House, at the conclusion of General Butler's speech, being immediately called to the exact facts by Hon. Lyman Tremain and others, the lie and the refutation went on to the record and before the country conjointly.

And, in the second instance, when it was charged by General Butler that the firm of Phelps, Dodge & Co. had procured the alteration of an Act of Congress, whereby the duties levied on certain articles had been changed to the advantage of the firm as importers, it was also shown—1st, that the alteration referred to was merely the correction of an error of expression in a law, and that the change in question was publicly authorized by Mr. Fessenden when Secretary of the Treasury, with the full concurrence of the proper law officers of the Government. 2d, that it was an absurdity on its face to suppose that a private firm or individual could, under any circumstances, alter a law of Congress after its enrollment and enactment; and 3d, that the change, so far from having been of any pecuniary advantage to the firm, was really to their disadvantage.

This speech of General Butler's was replied to immediately, amid great excitement on the floor of the House, by Hon. Ellis H. Roberts, of New York; Hon. Charles Foster, of Ohio; Hon. Lyman Tremain, of New York, and Hon. Henry S. Dawes, of Massachusetts, the last named gentleman being at the time chairman of the Committee of Ways and Means. In the course of this debate, which was protracted until nearly midnight, Mr. Foster, of Ohio, pronounced some of the statements made by General Butler to be "unequivocal falsehoods;" and also charged that one of Mr. Foster's letters, which General Butler read in his speech, and claimed to have been picked up in the street, was in reality stolen from his (Foster's) pocket. Of the character of the other speeches the following extract, from that of Hon. Lyman Tremain, will serve as an example:

"No man can deny the power of the gentleman from Essex. But he has not the power to raise the dead; and until he has that power he can never reverse the judgment of this House and of this country that the Sanborn contract and the manner of its performance constitute the most disgraceful and disgusting performance that has ever brought discredit upon the American name. With all his power to please, and to call down the plaudits of the galleries, the gentleman from Massachusetts can never roll back the popular tide or reverse that judgment, which is the judgment of the American people, that the scenes which have transpired in New York, of which Phelps, Dodge & Co. were the victims, are as deserving of the condemnation of an honest and justice loving community as were the diabolical transactions of the inquisition and of the star chamber.

Sir, there is in all this broad land but one man who has the boldness to stand up against the judgment of an honest people—against the unanimous expression of this House—against the conscience and the honest opinions of a thoughtful and a truth loving community in regard to these transactions. The time for making the defence was when the gentleman from Massachusetts was invited and he did not come. He was sick! He will be sicker yet before he gets through with his connection with the Sanborn and the Jayne infamies. No man is able to stand up before the American people and sustain these atrocious proceedings."

Six months had not elapsed before the above prophecy and assertion of Mr. Tremain was made fact; and Gen. Butler, by an overwhelming majority, was declared, by the constituents to whom he had again appealed, unworthy to longer represent them in the halls of the national legislature.

With the detail of this latter incident this extraordinary series of events for the present comes to a close. Whether in the future there is to be occasion for continuing the record; whether the Government will do justice by paying back the money, time only can show. But of this we may be sure, that what has occurred and what has been written has passed permanently into political and economic history, to be used hereafter for illustrating how fiscal laws, enacted in disregard of true and acknowledged economic principles, and having for a purpose the subserving of objects other than the direct pecuniary necessities of the State, invariably work to the loss and demoralization of the whole people; and also how, even under an acknowledged free and Republican form of Government, a system and practice of espionage and terrorism, the like of which would have been disgraceful even under a despotic government of old Europe, becomes not only possible, but is justified and participated in by men occupying the first positions in the State.

"Ill fares the land to hastening ills a prey,  
Where wealth accumulates and men decay."

DAVID A. WELLS.





